

John
No. 10266

115
United States 5
Circuit Court of Appeals
For the Ninth Circuit.

LA VERNE CO-OPERATIVE CITRUS ASSOCIATION, a corporation, GLENDORA CO-OPERATIVE CITRUS ASSOCIATION, a corporation, VENTURA ORANGE AND LEMON ASSOCIATION, a corporation, WHITTIER MUTUAL ORANGE & LEMON ASSOCIATION, a corporation, INDEX MUTUAL ASSOCIATION, a corporation and CHULA VISTA MUTUAL LEMON ASSOCIATION, a corporation, organized and existing under the laws of California,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

NOV - 3 1942

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

GUY RICHARDS CRUMP

458 S. Spring St.

Los Angeles, Calif.

For Appellee:

LEO V. SILVERSTEIN

United States Attorney

WM. W. WORTHINGTON

Assistant U. S. Attorney

600 U. S. P. O. & Court House
Bldg.

Los Angeles, Calif.

In the District Court of the United States
In and for the Southern District of California
Central Division

No. 1596-BH

Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LaVERNE CO-OPERATIVE CITRUS ASSO-
CIATION, a corporation, GLENDORA CO-
OPERATIVE CITRUS ASSOCIATION, a
corporation, and UPLAND ORCHARDS,
INC., a corporation,

Defendants.

No. 1597-BH

Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VENTURA COUNTY ORANGE AND LEMON
ASSOCIATION, a corporation,

Defendant.

No. 1620-BH

Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WHITTIER MUTUAL ORANGE AND LEMON
ASSOCIATION, a corporation,

Defendant. [1*]

No. 1635-BH

Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

INDEX MUTUAL ASSOCIATION,
a corporation,

Defendant.

No. 110-Civil-SD (BH)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHULA VISTA MUTUAL LEMON ASSOCIA-
TION, a corporation organized and existing
under the laws of California,

Defendant.

*Page numbering appearing at foot of page of original certified
Transcript of Record.

AGREED STATEMENT OF THE CASE FOR
USE ON APPEAL, UNDER RULE 76 OF
THE RULES OF CIVIL PROCEDURE.

The above entitled five cases, together with five other cases of the same nature, in all of which the United States of America was plaintiff, and in all of which the same relief was sought, were consolidated for trial and were tried as such in the above entitled Court.

This agreed statement of the case is prepared and agreed to for use on and in connection with the appeal of the appealing defendants in each of the following designated five cases, to-wit:

No. 1596-BH

Civil

No. 1 UNITED STATES OF AMERICA,
Plaintiff,

vs.

LaVERNE CO-OPERATIVE CITRUS
ASSOCIATION, a corporation,
GLENDORA CO-OPERATIVE
CITRUS ASSOCIATION, a corpo-
ration, and UPLAND ORCHARDS,
INC., a corporation,
Defendants. [2]

No. 1597-BH

Civil

No. 2 UNITED STATES OF AMERICA,
Plaintiff,

vs.

VENTURA COUNTY ORANGE AND
LEMON ASSOCIATION, a corpo-
ration,

Defendant.

No. 1620-BH

Civil

No. 3 UNITED STATES OF AMERICA,
Plaintiff,

vs.

WHITTIER MUTUAL ORANGE AND
LEMON ASSOCIATION, a corpo-
ration,

Defendant.

No. 1635-BH

Civil

No. 4 UNITED STATES OF AMERICA,
Plaintiff,

vs.

INDEX MUTUAL ASSOCIATION,
a corporation,

Defendant.

No. 110-Civil SD (BH)

No. 5 UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHULA VISTA MUTUAL LEMON
ASSOCIATION,

Defendant.

For the sake of convenience and to abbreviate
the record,

Case No. 1 will be designated as the LaVerne
Case,

Case No. 2 as the Ventura Case,

Case No. 3 as the Whittier Case,

Case No. 4 as the Index Case, and

Case No. 5 as the Chula Vista case. [3]

LA VERNE CASE.

In the District Court of the United States
In and for the Southern District of California
Central Division

No. 1596-BH

UNITED STATES OF AMERICA,
Plaintiff,

v.

LA VERNE COOPERATIVE CITRUS ASSO-
CIATION, a corporation; GLENDORA CO-
OPERATIVE CITRUS ASSOCIATION, a
corporation; UPLAND ORCHARDS, INC., a
corporation,

Defendants.

COMPLAINT TO ENJOIN VIOLATIONS OF
ORDER OF THE SECRETARY OF AGRICULTURE

I.

This action is brought by the United States, through the United States Attorney for the Southern District of California, under the direction of the Attorney General of the United States, and at the request and under the authority of the Secretary of Agriculture of the United States.

II.

The defendant LaVerne Co-Operative Citrus Association is a corporation organized and existing under the laws of the state of California and has its principal place of business at 1941 Lincoln Avenue, La Verne, Los Angeles County, California.

III.

The defendant Glendora Co-Operative Citrus Association is a corporation organized and existing under the laws of the state of California and has its principal place of business at South Vermont Avenue and Santa Fe Tracks, Glendora, Los Angeles County, California.

IV.

The defendant Upland Orchards, Inc., is a corporation organized and existing under the laws of the state of California and has [4] its principal place of business at 225 Stowell Street, Upland, Los Angeles County, California.

V.

This proceeding is brought under section 8a (6) of the Act of May 12, 1933 (48 Stat. 31, U.S.C., Title 7, section 608a (6), as amended August 24, 1934, 49 Stat. 672) and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress) (the said Act of May 12, 1933, as reenacted and amended being hereinafter referred to as "the Act"), investing the several District Courts of the United States with jurisdiction specifically to enforce and to prevent and restrain any person from violating any order issued by the Secretary pursuant to the provisions of Title I of said Act. The purpose of the proceeding is specifically to enforce the provisions of a certain Order known as Order No. 53, "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," issued by the Secretary of Agriculture of the United States, pursuant to section 8c of Title I of the said Act, and also to prevent and restrain the defendants from handling lemons in the current of interstate commerce or in foreign commerce with Canada or so as directly to burden, obstruct, or effect such commerce in such lemons in violation of the provisions of the Order. A copy of the Order is attached hereto, marked "Exhibit A," and made a part hereof.

VI.

As hereinafter used the term "Order" means the said Order No. 53, "Regulating the Handling

of Lemons Grown in the State of California and Arizona;" the term "Secretary" means the Secretary of the United States; the term "lemons" means lemons grown in the states of California and Arizona; the term "handling" means only such handling of lemons as is in the current of interstate or foreign commerce with Canada or which directly burdens, obstructs, or affects such commerce in such fruit; and the term "handler" or "shipper" means any person [5] engaged in such handling.

VII.

Pursuant to and by virtue of the authority vested in the Secretary by section 8c (3) of the Act, and in accordance with General Regulations, Series A, No. 1 of the Agricultural Adjustment Administration, United States Department of Agriculture, the Secretary on October 3, 1940, gave to all interested persons, including the defendants, and to each of them, due notice of a public hearing to be held in the city of Los Angeles, state of California, on October 21, 1940, with respect to a proposed order regulating the handling of lemons grown in the states of California and Arizona. The hearing was held pursuant to, and in accordance with, said notice and regulations. All interested persons, including defendant, were afforded full opportunity to be heard concerning the proposed Order. A copy of General Regulations, Series A, No. 1, and amendment thereto, is attached hereto, marked "Exhibit B," and made a part hereof.

VIII.

The Secretary found from the evidence introduced at the said hearing that the issuance of the Order regulating the handling of lemons grown in the state of California and the State of Arizona, and all the terms and conditions of the Order, would tend to improve marketing conditions respecting the handling of such lemons in the channels of interstate and foreign trade and commerce with Canada, and would tend to effectuate the declared policy of Title I of the Act relating to the establishment of marketing conditions for such lemons moving in such channels of trade and commerce and, acting pursuant to and by virtue of the authority vested in him by section 8c of the Act, the Secretary accordingly issued the Order on April 5, 1941, setting forth specifically his findings as aforesaid, and his findings of all other facts, the existence of which were requisite to the issuance and effectiveness of the Order. The Order by its terms, became effective on April 10, 1941, and has been continuously in effect thereafter, up [6] to and including the present time.

IX.

The Order is applicable to handlers of lemons grown in the states of California and Arizona. It regulates the handling of such lemons in the same manner as a marketing agreement executed by the Secretary on April 5, 1941, after a public hearing on a proposed marketing agreement, the

parties signatory to which were handlers who handled more than eighty per cent. (80%) of the volume of lemons covered by the Order. The order regulates the handling of lemons in the same manner as, and is made applicable only to persons in the respective classes of industrial or commercial activity specified in the said marketing agreement. The findings of the Secretary relating to the regional application of the Order are set forth in the Order. The Secretary determined, as set forth in the Order, that the issuance of the Order was approved or favored by the producers who, during the year November 1, 1939, to October 31, 1940, both dates inclusive, determined by the Secretary to be a representative period, have produced for market within the states of California and Arizona at least two-thirds of the volume of such lemons produced for market within such production area during the said period.

X.

Subsequent to the effective date of the Order and prior to April 23, 1941, and pursuant to the provisions of section 953.2 thereof, the Secretary established a Lemon Administrative Committee and selected the members thereof in accordance with the provisions of said section of the Order, and the said Committee is now and has at all times since the establishment thereof exercised the powers and performed the duties given and required by the Order.

XI.

Defendants Glendora Co-Operative Citrus Association, La Verne Co-Operative Citrus Association, and Upland Orchards, Inc., are, and each of them is, handlers of lemons, engaged in the handling of lemons [7] as the terms are defined in the Order, and the defendant La Verne Co-Operative Citrus Association on or about May 2, 1941, made and filed with the said Committee a written application for a prorated base and for allotments; the defendant Upland Orchards, Inc., on or about May 2, 1941, also filed a written application with the said Committee for a prorated base and for allotments; the defendant Glendora Co-Operative Citrus Association on or about May 7, 1941, filed with the Committee such a written application for a prorated base and for allotments.

XII.

The Secretary on or about May 31, 1941, and in accordance with the provisions of section 953.4 of the Order, and upon the recommendations of the Lemon Administrative Committee, and upon other available information, fixed and determined prorated bases for all handlers of lemons who applied for a prorated base and for allotments, including defendants and each of them, and established a weekly regulation period for the handling and shipping of lemons, commencing June 1, 1941, and ending June 8, 1941.

XIII.

The Secretary, acting pursuant to, and in accordance with, provisions of the Order, and upon the basis of the recommendation of the Lemon Administrative Committee, and upon other available information, fixed the quantity of lemons which could be handled and shipped from California and Arizona in interstate commerce and foreign commerce with Canada during the weekly regulation period fixed by him, beginning June 1, 1941, and ending June 8, 1941, as aforesaid, at six hundred and fifty (650) carloads of lemons.

XIV.

For the said weekly regulation period, beginning June 1, 1941, and ending June 8, 1941, the Secretary fixed an allotment for the defendant La Verne Co-Operative Citrus Association at three thousand, five hundred, and fifty-seven (3,557) packed boxes of lemons so that the largest amount of lemons which defendant could lawfully ship in [8] the current of interstate commerce or foreign commerce with Canada during the said weekly regulation period, including an overshipment privilege in the amount of four hundred and six (406) packed boxes of lemons, under the applicable provisions of the Order was three thousand, nine hundred, and sixty-three (3,963) packed boxes of lemons.

XV.

The defendant, during the weekly regulation period specifically mentioned above and in the regular

course of its business, has sold, handled and shipped lemons in the current of interstate commerce and foreign commerce with Canada in disregard, defiance and violation of the applicable provisions of the Order and of the regulations issued thereunder.

XVI.

During the weekly regulation period beginning June 1, 1941, and ending June 8, 1941, said defendant La Verne Co-Operative Citrus Association shipped and handled six thousand, five hundred and sixty-one (6,561) packed boxes of lemons of which number two thousand, five hundred and ninety-eight (2,598) packed boxes were shipped by defendant in violation of the Act and of the Order, as follows:

Date	From	To	No. of boxes in violation
6/5/41	La Verne, California	Denver, Colo.	15
6/5/41	La Verne, California	Harlem River, N. J.	406
6/6/41	La Verne, California	Milwaukee, Wis.	406
6/6/41	La Verne, California	Jersey City, N. J.	406
6/6/41	La Verne, California	St. Louis, Mo.	208
6/6/41	La Verne, California	Louisville, Ky.	345
6/7/41	La Verne, California	Philadelphia, Pa.	406
6/7/41	La Verne, California	El Paso, Texas	406

XVII.

For the said weekly regulation period, beginning June 1, 1941, and ending June 8, 1941, the Secretary fixed an allotment for [9] the defendant Gledora Co-Operative Citrus Association at two hundred and eighty-eight (288) packed boxes of lem-

ons, so that the largest amount of lemons which defendant could lawfully ship in the current of interstate commerce or foreign commerce with Canada during the said weekly regulation period, including an overshipment privilege in the amount of four hundred and six (406) packed boxes of lemons under applicable provisions of the Order, was six hundred and ninety-four (694) packed boxes of lemons.

XVIII.

The defendant Glendora Co-Operative Citrus Association, during the weekly regulation period specifically mentioned above and in the regular course of its business, has sold, handled, and shipped lemons in the current of interstate commerce and foreign commerce with Canada in disregard, defiance, and violation of the applicable provisions of the Order and of the regulations issued thereunder.

XIX.

During the weekly regulation period, beginning June 1, 1941, and ending June 8, 1941, defendant shipped and handled nine hundred and thirty-five (935) packed boxes of lemons, of which number two hundred and forty-one (241) packed boxes were shipped by defendant in violation of the Act and of the Order, as follows:

Date	From	To	No. of boxes in violation
6/6/41	Covina, California	Waverly, New Jersey	42
6/6/41	Whittier, California	Denver, Colorado	199

XX.

For the said weekly prorate period, beginning June 1, 1941, and ending June 8, 1941, the Secretary fixed an allotment for the defendant Upland Orchards, Inc., at one hundred and twenty-four (124) packed boxes of lemons, so that the largest amount of lemons which defendant could lawfully ship in the current of interstate commerce or foreign commerce with Canada during the said weekly prorate period, including an overshipment privilege in the amount of four hundred and six (406) packed boxes of lemons under applicable provisions of the [10] Order, was five hundred and thirty (530) packed boxes of lemons.

XXI.

The defendant Upland Orchards, Inc., during the weekly prorate period specifically mentioned above and in the regular course of its business, has sold, handled, and shipped lemons in the current of interstate commerce and foreign commerce with Canada in disregard, defiance, and violation of the applicable provisions of the Order and of the regulations issued thereunder.

XXII.

During the weekly prorate period, beginning June 1, 1941, and ending June 8, 1941, said defendant Upland Orchards, Inc., shipped and handled one thousand, six hundred, and twenty-four (1,624) packed boxes of lemons, of which number

one thousand, and ninety-four (1,094) oacked boxes were shipped by defendant in violation of the Act and of the Order as follows:

Date	From	To	No. of boxes in violation
6/5/41	Upland, California	El Paso, Texas	282
6/6/41	Upland, California	El Paso, Texas	406
6/7/41	Upland, California	Denver, Colorado	406

XXIII.

The market for lemons grown in the states of California and Arizona is predominantly interstate in character, and there is active competition for this interstate market among all handlers of lemons in the states of California and Arizona. The defendants are, and each of them is, engaged in handling, selling, and shipping lemons directly in interstate commerce and, in view of the prevailing marketing conditions respecting lemons, the absence of regulation of marketing would adversely affect the movement of lemons in interstate and foreign commerce by causing excessive and untimely moving of such fruit to markets in the United States and Canada with consequent serious fluctuations in the price at which such fruit may be sold by handlers and in the price paid to growers thereof, and would subject the jobbing [11] trade to increased risks through an unstabilized market for such fruits, and cause loss of confidence in the market on the part of all persons engaged in the handling of such lemons. These conditions have in some cases meant a return to growers insufficient to meet the cost of producing

and marketing their fruit and have caused obstructions to the normal flow and distribution of such fruit among the several states of the United States and with Canada. A further result of the disorderly marketing of lemons is to lower the standard of trade in lemons in interstate commerce and in commerce with Canada to the detriment, not only of the growers, but also of all distributors of such fruit in the United States and Canada.

XXIV.

The defendants, and each of them, conduct their business in active and substantial competition with other handlers of lemons complying with the provisions of the Order. The effect of the violations by defendants, and each of them, of the provisions of the Order has been to impair the effectiveness of the program inaugurated by the Order regulating the handling of lemons in interstate commerce and in foreign commerce with Canada in such fruit, to disrupt and obstruct interstate commerce and foreign commerce with Canada in such fruit, to render partially ineffective the lawful regulation of such commerce as provided in the Act and Order, to bring about unstabilized marketing conditions respecting such commerce which have injured and burdened the lemon industry and which Congress has sought to prevent in order to preserve such commerce for the future, and, to defeat the policy of Congress, as declared in the Act, to promote the orderly exchange of commodities

among the several states of the United States and with foreign nations.

The defendants, and each of them, since the effective date of the Order, have failed and refused, and are now failing and refusing, to comply with the terms of the Order, and have indicated that they, and each of them, will violate the provisions thereof in the [12] future. The plan of regulation contained in the Order contemplates the proration and allotment of shipments of lemons from week to week, under conditions specified in the Order.

The continued non-compliance by the defendants, and each of them, with the provisions of the Order is and will be injuries to interstate commerce and foreign commerce with Canada in lemons, and to growers, handlers, and consumers of such fruit, and threatens the stability of such interstate and foreign commerce in lemons. Unless the defendants, and each of them, are immediately required to desist from further violations of the Order, other handlers of lemons will be incited to violate the provisions of the Order, and handlers subject to orders issued, or which may hereafter be issued, by the Secretary of Agriculture, will be encouraged to violate the provisions thereof, all of which will tend to thwart the national policy of improving marketing conditions with respect to the handling of lemons and other specified commodities in interstate and foreign commerce. The violations of the provisions of the Order committed by the defend-

ants, and each of them, caused, and continued violations will cause, great and irreparable damage to the plaintiff and to the public, and the plaintiff is without an adequate remedy at law in the premises.

XXV.

There are attached hereto and made a part hereof, the following exhibits, each of which is a true and correct copy.

“Exhibit A”: “Order Regulating the Handling of Lemons Grown in the States of California and Arizona.” (Order Series—Order No. 53).

“Exhibit B”: General regulations made by the Secretary of Agriculture with approval of the President under the Agricultural Adjustment Act of May 12, 1933, as amended (General Regulations—Series A, No. 1).

XXVI.

Notice of application for temporary restraining order cannot be given to the defendant without immediate and irreparable loss and [13] damage to the plaintiff and to the public.

Wherefore, Plaintiff Prays:

(1) That pending the final determination of this cause, the court issue a preliminary injunction preventing and restraining the defendant corporations, and each of them, their agents, officers, attorneys, employees, and assigns, and all persons acting under or in behalf of said defendant corporations, or any of them, or claiming so to act,

from the handling of lemons in violation of the provisions of said Order;

(2) That thereafter, on final hearing of this cause, said preliminary injunction be made permanent;

(3) That forthwith, upon the filing of Complaint, the court issue an order to show cause why a preliminary injunction pending the final determination of this cause should not be granted, and that concurrently with the issuance of said Order to Show Cause why a preliminary injunction should not issue, the court issue a temporary restraining order preventing and enjoining the said defendant corporations, and each of them, in like manner and effect as hereinbefore prayed, pending the return of said order to show cause and until further order of the court thereon;

(4) That the plaintiff be given all such other further and different relief as to this court may seem just and proper;

(5) That plaintiff recover its costs and disbursements.

WM. FLEET PALMER,

United States Attorney.

WILLIAM F. HALL,

Assistant U. S. Attorney,

Attorneys for Plaintiff.

[14]

(Duly verified.) [15]

[Title of Court and Cause in the La Verne Case.]

TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE

Upon reading the verified complaint on file herein, and it appearing therefrom and from the proceedings had herein that;

Under and pursuant to the terms and provisions of Public No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C.A. 601 et seq.) the Secretary of Agriculture of the United States, after hearings held upon due notice, under and by virtue of the terms of said Act and the rules and regulations appertaining to such matters, issued an Order under the terms and provisions of Section 8c of said Act, which Order is entitled "Order Regulating the Handling of Lemons Grown in the States of California and Arizona"; and

It Further Appearing that by the terms of said Order the same became effective April 10, 1941, from and after the hour of 12:01 o'clock a.m., p.s.t., of said day, and has ever since said date and is now in full force and effect and operation; and

It Further Appearing that said defendant corporations are and each of them is engaged in the business of handling and shipping lemons grown in the State of California in violation of the terms of said Order, and each of said defendant corporations threatens to continue to engage in the han-

dling and shipping of such lemons without regard to and in violation of the terms of said Act, and the said Order; and

It Further Appearing that immediate and irreparable loss and damage will result to the plaintiff herein before the matter can be heard on notice;

Now, Therefore, it is hereby ordered that until the further order of this court, the defendant corporations, and all their servants, [18] agents, officers, attorneys, employees, and assigns, and each of them, and all persons acting on behalf of said defendants or claiming to act on behalf thereof, are hereby restrained and enjoined from handling or shipping in interstate commerce or to any point in Canada, lemons grown in the State of California or in the State of Arizona in violation of or contrary to the terms and provisions of the said "Order Regulating the Handling of Lemons Grown in the States of California and Arizona".

And It Is Further Ordered that the defendant corporations, and each of them, be and appear before this court at the United States Court House and Post Office Building in Los Angeles, California, on, to-wit, the 23d day of June, 1941, at the hour of 10 o'clock a.m. before the Honorable J. F. T. O'Connor, a Judge thereof, or as soon thereafter as counsel may be heard, and then and there show cause, if any they have, why, pending the final determination of the cause, an injunction should not be made herein enjoining and restraining the said defendants, and each of them, their servants, agents,

officers, attorneys, employees, and assigns, and each of them, and all persons acting on behalf of said defendants or claiming to act on behalf thereof, from handling or shipping lemons grown in the State of California or the State of Arizona in violation of or contrary to the terms of said "Order Regulating the Handling of Lemons Grown in the States of California and Arizona".

Dated: Los Angeles, California, this 17 day of June 1941.

J. F. T. O'CONNOR

United States District Judge.

[Endorsed]: With Stamp a True Copy, Attest,
Etc.

R. S. ZIMMERMAN,

Clerk U. S. District Court,
Southern District of California.

By FRANCIS E. CROSS

Deputy. [19]

The foregoing Temporary Restraining Order and Order to Show Cause was duly and regularly served upon defendant La Verne Co-Operative Citrus Association, a corporation, upon the 18th day of June, 1941; upon the defendant Glendora Co-Operative Citrus Association, a corporation, upon the 18th day of June, 1941, and upon the defendant Upland Orchards, Inc., a corporation upon the 18th day of June, 1941, all of said services having been made within the Southern District of California as ap-

pears by the return of the United States Marshal for said District, on file herein.

Within the time allowed by law and the stipulation of the parties, defendant LaVerne Co-Operative Citrus Association, a corporation, served and filed its verified answer, which was and is in the words and figures following, to-wit:

[Title of Court and Cause in the LaVerne Case.]

ANSWER OF DEFENDANT LA VERNE
CO-OPERATIVE CITRUS ASSOCIATION.

Answering the complaint herein, defendant LaVerne Co-Operative Citrus Association, hereinafter referred to as defendant, admits, denies and avers:

I.

Admits the allegations of Paragraph I.

II.

Admits the allegations of Paragraph II, and avers that defendant is a cooperative marketing corporation.

III.

Admits the allegations of Paragraph III and avers that Glendora Co-Operative Citrus Association is a cooperative marketing corporation.

IV.

Admits the allegations of Paragraph IV and avers that Upland Orchards, Inc., is a cooperative marketing corporation. [20]

V.

Admits the allegations of Paragraph V.

VI.

Admits the allegations of Paragraph VI.

VII.

Admits the allegations of Paragraph VII, except the allegation that "All interested persons, including defendant, were afforded a full opportunity to be heard concerning the proposed Order." And in this behalf avers that defendant was not given a full opportunity to be heard, in that it was not permitted to cross-examine witnesses for proponents of the proposed Order, or adverse witnesses, or to prove, or endeavor to prove, by way of cross examination, that the testimony and evidence introduced by proponents was false or fallacious and did not in fact prove what it purported to prove.

VIII.

Answering the allegations of Paragraph VIII, admits that the Secretary, purporting to act pursuant to and by virtue of authority vested in him by Section 8c of the Act, issued the Order on April 5, 1941. Admits that such Order by its terms became effective on April 10, 1941. Denies each and all of the other allegations of Paragraph VIII.

IX.

Admits the allegations of Paragraph IX, except the allegation that the parties signatory to the Mar-

keting Agreement, were handlers who handled more than eighty per cent (80%) of the volume of lemons covered by the Order. In this behalf defendant has no information or belief sufficient to enable it to *anser* said allegation, and on that ground denies the same.

X.

Admits that subsequent to the effective date of the Order and prior to April 23, 1941, the Secretary established a Lemon Administrative Committee and selected the members. Defendant has no [21] information or belief sufficient to enable it to answer the other allegations of Paragraph X and therefore and on that ground denies each and all thereof.

XI.

Answering the allegations of Paragraph XI of the complaint, admits that defendants Glendora Co-Operative Citrus Association, LaVerne Cooperative Citrus Association and Upland Orchards, Inc., are, and each of them is, handlers of lemons, engaged in the handling of lemons as the terms are defined in the Order. Admits that LaVerne Co-Operative Citrus Association, on or about May 2, 1941, made and filed with the said Committee a written application for a pro rate base and for allotments. But avers that all applications, and other documents and papers filed by defendant with the Committee, were filed under protest and without waiving any rights of the defendant. Defendant has no informa-

tion or belief sufficient to enable it to answer the remaining allegations in Paragraph XI of the complaint and therefore and upon that ground, denies each and all thereof.

XII.

Admits the allegations of Paragraph XII, except that defendant denies that the Secretary fixed and determined pro rate bases in accordance with the provisions of Section 953.4 of the Order.

XIII.

Admits the allegations of Paragraph XIII and avers that the week as fixed by the Secretary began at 12.01 A.M. on June 1, 1941 and ended 12.01 A.M. on June 8, 1941.

XIV.

Denies each and all of the allegations in Paragraph XIV, except that it admits that "For the said weekly regulation period, beginning June 1, 1941, and ending June 8, 1941, the Secretary fixed an allotment for the defendant LaVerne Co-Operative Citrus Association at three thousand five hundred fifty-seven (3,557) [22] packed boxes of lemons.

XV.

Denies each and all of the allegations of Paragraph XV.

XVI.

Answering the allegations of Paragraph XVI,

avers that during said weekly period beginning June 1, 1941 and ending June 8, 1941, defendant shipped and handled six thousand eight hundred forty-six (6,846) packed boxes of lemons as follows:

Date	From	To	Boxes:
June 1	La Verne, California	Waverly, N. J.	96
June 1	" "	Nevada (by truck)	25
June 1	" "	N. Hawthorne, N. J.	208
June 2	" "	Seranton, Pa.	406
June 2	" "	Richmond, Va.	320
June 3	" "	St. Louis, Mo.	208
June 3	" "	Baltimore, Md.	406
June 3	" "	Dallas, Texas	406
June 3	" "	Springfield, Mo. (truck)	150
June 4	" "	Cleveland, Ohio	406
June 4	" "	El Paso, Texas	406
June 4	" "	N. Hawthorne, N. J.	208
June 4	" "	Waverly, N. J.	96
June 5	" "	Denver, Colo.	406
June 5	" "	Harlem River, N. J.	406
June 5	" "	Seranton, Pa.	406
June 6	" "	St. Louis, Mo.	208
June 6	" "	Louisville, Ky.	330
June 6	" "	Jersey City, N. J.	406
June 6	" "	Milwaukee, Wis.	406
June 6	" "	Springfield, Mo. (truck)	125
June 7	" "	El Paso, Texas	406
June 7	" "	Philadelphia, Pa.	406

[23]

Except as specifically averred herein, defendant denies each and all of the allegations of Paragraph XVI.

XVII.

Defendant has no information or belief sufficient to enable it to answer the allegations of Paragraph

XVII, and therefore and on that ground denies each and all thereof.

XVIII.

Defendant has no information or belief sufficient to enable it to answer the allegations of Paragraph XVIII, and therefore and on that ground denies each and all thereof.

XIX.

Defendant has no information or belief sufficient to enable it to answer the allegations of Paragraph XIX and therefore and on that ground denies each and all thereof.

XX.

Defendant has no information or belief sufficient to enable it to answer the allegations of Paragraph XX and therefore and on that ground denies each and all thereof.

XXI.

Defendant has no information or belief sufficient to enable it to answer the allegations of Paragraph XXI and therefore and on that ground denies each and all thereof.

XXII.

Defendant has no information or belief sufficient to enable it to answer the allegations of Paragraph XXII and therefore and on that ground denies each and all thereof.

XXIII.

Answering the allegations of Paragraph XXIII, admits that the market for lemons grown in the

states of California and Arizona is predominantly interstate in character. Admits that there is active competition for this interstate market among some handlers of lemons in the states of California and Arizona, but denies that there is [24] such competition between all such handlers. Admits that defendant is engaged in handling, selling and shipping lemons directly in interstate commerce. Denies that the absence of regulation of marketing would or will adversely affect the movement of lemons in interstate or foreign commerce, or would or will cause excessive or untimely moving of such fruit to market in the United States or Canada, or would or will subject the jobbing trade to increased risk through an unstabilized market for such fruits, or otherwise, or would or will cause an unstabilized market, or would or will cause loss of confidence in the market on the part of all persons, or any person, engaged in the handling of such lemons. Denies that the conditions referred to in Paragraph XIII have in any instance meant, or resulted in, a return to growers insufficient to meet the cost of producing and marketing their fruit, or have caused obstructions to the normal flow of distribution of such fruit among the several states or with Canada. Admits that one result of the disorderly marketing of lemons is to lower the standard of trade in lemons in interstate commerce and in commerce with Canada to the detriment of both growers and distributors of such fruit, but denies that there was, or has been, any disorderly marketing of lemons, except such as

has been occasioned by the operation of the Order referred to in Paragraph V of the complaint. In this behalf avers that said Order and the operation thereof have resulted in unstabilized marketing conditions and in disorderly marketing. Admits that from time to time there have been serious fluctuations in the price at which such fruit may be sold by handlers and in the price paid to growers thereof, but avers that such fluctuations have not been brought about or aggravated by the absence of the regulation of marketing. On the contrary avers that such fluctuations have been occasioned and aggravated by the operation of said Order.

XXIV.

Answering the allegations of Paragraph XXIV admits that [25] defendants herein conduct their businesses in active and substantial competition with other handlers of lemons. Defendant has no information or belief sufficient to enable it to answer the allegation that other handlers are complying, or have complied, with the provisions of the Order, and on that ground, denies the same. Admits that at times, until served with the temporary restraining order, defendant herein failed and refused to comply with those terms of the Order fixing the weekly allotments and limiting their shipments in interstate commerce. Admits that the plan of regulation contained in the Order contemplates the pro-ration and allotment of lemons from week to week under conditions specified in the Order. Denies each and all of the other allegations of Paragraph XXIV.

XXV.

Admits the allegations of Paragraph XXV.

XXVI.

Denies each and all of the allegations of Paragraph XXVI.

For a Separate and Further Defense, Defendant Avers:

I.

The commercial production of lemons in the United States is confined almost entirely to the State of California. There is a comparatively small production in the State of Arizona; as defendant is informed and believes and therefore and on that ground avers, less than 500 acres being planted to lemons in that state. In California there are over 6,000 lemon growers growing lemons on more than 69,000 acres. The average annual on tree farm value of California lemons for the five years ending with the 1939-40 marketing season amounted to more than \$15,000,000. The marketing season begins on November 1 of one year and ends on October 31 of the following year.

The shipment of lemons from California is primarily interstate in character. From 75% to 80% of California lemons are sold and shipped for commercial fresh fruit consumption. Of this fruit [26] approximately 90% is shipped to markets outside of California. Lemons are shipped throughout the United States and in addition to Canada and other foreign countries. Practically the entire supply of

lemons consumed in the United States is grown in and shipped from California; less than 1% from Arizona.

Lemons are picked and shipped in every month of the year. For California-Arizona as a whole the heaviest picks generally occur in the months of February, March, April and May. Shipments are generally heaviest in the months of June, July and August.

II.

Lemons are a tree crop which require from four to six years to bring to production. Although the trees produce the year round, there are definite peaks of productivity. The fruit is usually picked when it attains merchantable size, this being determined by the use of a ring of size depending upon the picking policy of the particular producer involved, market conditions at the time and the condition of the fruit. When lemons are picked they are placed in picking (or field) boxes and hauled to a packing house or other shipping point. When they arrive at the packing house they are washed and sorted for color. Very low grade lemons, which are called "washer culls", are then removed.

Lemons not suitable for sale in fresh form having been eliminated, the remainder are generally, but not always, placed in storage, usually in basements which are air-conditioned, and are there held until they are to be prepared for market. When that time comes they are removed from the storage rooms and placed upon grading belts, where they are graded by

hand and sized largely by eye, after which they are packed in standard packing boxes for shipment, or are occasionally sold loose within the state. An elimination again takes place during this final operation, when unmerchable fruit, or fruit which the handler does not wish to market, is set aside for by-products disposition. [27]

III.

Peak picks of lemons are generally later in the season in the coastal areas of California than in the interior. The coastal areas are mostly in Ventura and Santa Barbara Counties, where recently increased plantings generally exceed those in other parts of the state. Lemons are classified with reference to maturity and color, as dark green, light green, silver, and tree-ripte (or yellow). The interior sections of California have large picks of tree-ripes coming mostly at one time, and most of the crop is of that type, whereas the coastal areas do not have such heavy picks at any one time and they are more uniformly of a dark green color. Green lemons keep in storage longer than silvers, and silvers longer than tree-ripes. Tree-ripes will keep in storage from ten days to six weeks; dark greens as long as six months. This difference in storage life is due not only to color at the time of picking, but also to the uniform growth rate the fruit has had during the growing season.

In the coastal areas there is less variation in the climatic condition, and the fruit has a more uniform

growth period than it does in the interior districts, which in the winter months are subject to greater cold and in the summer time to a higher temperature and a more arid atmosphere.

There is a marked difference in the proportion of tree-ripes in different groves in the same district; the age of the trees, their physical condition and soil condition being controlling factors. The proportion of tree-ripes in the same orchard (particularly orchards in the interior sections) varies markedly from year to year, due to climatic conditions, such as wind and variation in humidity and temperature. A dry wind will bring lemons to yellow or tree-ripe color before their time and has a tendency to shorten their life expectancy. [28]

IV.

Lemons are stored in loose boxes. They are shipped in packed boxes of standard size, the number of lemons in a packed box varying according to their size. They are known and referred to in the trade as to size by the number which can be packed in a standard packed box as 300's, 360's, etc.

When lemons are being packed for shipment they are removed from the loose boxes and placed upon grading belts, and when a handler is packing he packs all available lemons which are on the belts. He does not take some and let the others go back into loose boxes. Rehandling of lemons tends to injure the fruit, reduce its merchantability and increase the cost of handling. In the process of packing, lemons are segregated as to size and grade, and

when a sufficient number of various sizes and grades are packed they are placed in cars for shipment. Lemons are only shipped in less than carload lots when shipped with other citrus fruits. It is not practicable nor economical to pack only one carload at a time. Unless a handler is permitted to pack at least two, and usually three, carloads at a time, he cannot compete successfully and will be forced out of business.

V.

Lemons shipped in interstate commerce are sold either at private sale F.O.B. packing house, or on a price arrival basis, or at auction. There are ten auction markets outside of, and one in, California. California Fruit Growers Exchange handles approximately 90% of the total lemon production of the United States. It sells most of the lemons marketed by it through the auctions. California Fruit Growers Exchange (hereinafter for convenience sometimes called "the Exchange") is a so-called cooperative marketing corporation marketing for more than 4,000 lemon growers. These growers turn in their fruit to various packing houses, of which they are members and which prepare it for shipment and ship it. Defendant is informed and [29] believes and therefore alleges, that over 60 packing houses handling lemons are affiliated with the Exchange. These houses are grouped into 25 district exchanges. The Exchange is made up of these district exchanges, with one director from each on the central board. Each district exchange, in turn, is made up of a group of local associations

or packing houses, with one director from each local association elected by its board; the directors of each local association are elected by its grower members. The local association or packing houses affiliated with the Exchange include both commercial corporations for profit and cooperative corporations.

VI.

Defendant is a cooperative marketing corporation, having its principal place of business at La Verne, Los Angeles County, California. For more than ten years last past it has been engaged in the business of selling (through a central marketing organization) and shipping lemons in interstate commerce. Defendant handles lemons for approximately 119 growers who have a producing acreage of approximately 683 acres in California.

VII.

Defendant markets its lemons through Mutual Orange Distributors, which is a cooperative marketing corporation organized under the laws of California. Mutual Orange Distributors (hereinafter for convenience sometimes referred to as "M. O. D.") has been marketing lemons and other citrus fruit for its member associations for many years and is a handler of lemons for nine cooperative corporations including defendant. M.O.D. markets for about 700 lemon growers in California, who own about 5,000 acres of producing lemon orchards. Its shipments average about 1,000 cars a year, divided among the various associations affiliated with it.

Approximately 75% of the lemons handled by M.O.D. and its member houses, including defendant, is sold and shipped for consumption in states other than California and Arizona. It has agents in [30] every carload market in the United States and Canada. While it has some salaried agents, it operates chiefly through brokers. Sales are negotiated by these agents and brokers, contracts of purchase and sale being signed in the state of delivery, and shipments made from California. M.O.D. sells for its member houses, including defendants, and they ship about 50% of the lemons handled by it and them direct to one consumer with its own retail outlets, which plans its orders for normal requirements weeks, and sometimes months, in advance.

M.O.D. and this defendant over a period of years have developed outlets for lemons to buyers who have long done and who want to continue to do business with M.O.D. and defendant. Shipments move to market in accordance with the demand of such buyers.

In order to supply the demand of its customers, defendant must know several weeks, and sometimes months, in advance what volume it is going to be able to supply. This type of operation is radically different from sales where, instead of selling direct to buyers with retail outlets, or other private sales on order, cars of lemons are moved to and sold at auction.

VIII.

The order referred to in Paragraph V of the complaint herein (hereinafter called "said Order" and sometimes "Order No. 53") creates an administrative committee consisting of six members appointed by the Secretary of Agriculture (hereinafter sometimes called "the Secretary") from persons nominated as provided in said Order. This committee is empowered by said Order to administer the provisions thereof and is charged with the duty of recommending to the Secretary the quantity of lemons to be handled each week in interstate commerce. Whenever the Secretary finds from the recommendations and information submitted by said committee, or from other available information, that to limit the quantity of lemons which may be handled in interstate commerce during a specified week will [31] tend to effectuate the declared policy of the Act, he fixes the quantity of lemons which may be handled during such week.

Said Order provides that each handler (that is, each first handler) of lemons shall submit to the committee a written application for a prorated base and for allotments; that the committee shall, with respect to each handler who has filed an application for a prorated base, compute the quantity of available lemons which, as of 12:01 A. M. on the Sunday nearest the date on which such computation is made, meets the requirements of marketing under applicable laws; that such computation shall be made every two weeks beginning with a date in

each fiscal year to be fixed by the committee and continuing so long as the committee recommends that regulation under said Order remain in effect.

Said Order further provides that the committee, in computing the quantity of lemons which for the applicable two week period each handler has available for current shipment, shall compute the quantity of lemons which each handler has picked from the trees and has assembled at an established shipping point within the area of production; that in the event any handler has lemons which he desires to market in other than fresh fruit channels, he may request the committee to compute the number of weeks that such lemons could be held in storage under commercial storage conditions, and, at the expiration of such period, would meet the requirements for marketing under applicable laws; that any such lemons shall be in containers and shall be assembled at one or more of the central points which may be approved by the committee; that if said handler is satisfied with the committee's computation, he shall give the committee written notification thereof and shall dispose of such lemons in other than fresh fruit channels; that the committee shall include such lemons as a part of the available lemons of such handler for the number of weeks computed.

Said Order further provides that if any handler submits [32] evidence satisfactory to the committee that such handler has lemons available for current shipment during the applicable two-week period,

but because of unavailable facilities the quantity of such lemons cannot be computed satisfactorily by the method otherwise provided by said Order, that said committee shall compute, pursuant to uniform rules adopted by the committee and approved by the Secretary, the quantity of lemons which such handler has available for current shipment during such period.

It is further provided in said Order that the quantity of each handler's lemons, as computed pursuant to the Order, shall be reported to the Secretary and shall constitute the recommendation of the committee as the quantity of lemons to be used by the Secretary in determining the prorate base, subject to adjustment by deduction of under-shipments and the addition of over-shipments, as authorized by said Order; that upon the basis of the recommendations and reports submitted by the committee, or other available information, the Secretary shall fix a prorate base for each handler who has made application therefor; that such prorate base shall represent the ratio between the quantity of each such handler's available lemons and the quantity of all such handlers' available lemons, and shall be applicable for the two-week period immediately following the week in which it is fixed by the Secretary; that whenever the Secretary has fixed the total quantity of lemons which may be handled during any week, and has fixed the handlers' prorate bases, the committee shall calculate the quantity of lemons which may be handled by

each such handler during such week; that such quantity shall be the allotment of each such handler, and shall be in an amount equal to the product of the handler's prorated base and the total quantity which may be handled during such week.

Respecting over-shipments, said Order provides that during any week for which the Secretary has fixed the quantity of lemons which may be handled, any handler (when not required to reduce the quantity [33] of lemons which he may handle) may handle, in addition to his allotment, an amount of lemons equivalent to 10% of said allotment, or one carload, whichever is greater, but that the quantity of lemons handled in excess of a handler's allotment (but not exceeding the quantity permitted to be handled) shall be deducted from his allotment for the next week in which the handling of lemons is regulated by said Order; that if such allotment is in an amount less than such quantity of lemons permitted to be handled by a handler, such quantity handled in excess of his allotment shall be deducted from succeeding weekly allotments until such excess has been entirely offset.

Respecting under-shipments, said Order provides that if a handler, during any week, handles a quantity of lemons less than his allotment for that week, such handler may, in addition to his allotment for the next succeeding week, handle only during such next succeeding week a quantity of lemons equivalent to such under-shipments.

Said Order provides that no handler shall han-

dle lemons except as provided by said Order and in conformity therewith.

IX.

Following the effective date of said Order, an administrative committee, as provided for therein, was appointed by the Secretary, which committee thereafter recommended to the Secretary volume regulation of shipments as provided in said Order. Thereupon the Secretary, pursuant to recommendations of said committee, fixed a total quantity of lemons which might be handled in the current of interstate commerce for the weekly period beginning 12:01 A. M. June 1, 1941 to 12:01 A. M. June 8, 1941, at 263,900 packed boxes, and the allotment of defendant at 3,557 packed boxes, computed on a pro-rate base of 1.348% of such total quantity.

Similarly, for the week beginning 12:01 A. M. June 8, 1941 to 12:01 A. M. June 15, 1941, the Secretary fixed a total quantity at [34] 233,450 packed boxes and the allotment of the defendant at 3147 packed boxes, computed on a prorate base of 1.348% of such total, which allotment was subsequently adjusted to 2741 packed boxes, by deducting 406 boxes for alleged over-shipment.

Similarly, for the week beginning 12:01 A. M. June 15, 1941 to 12:01 A. M. June 22, 1941, the Secretary fixed a total quantity at 223,300 packed boxes, and the allotment of defendant at 2282 packed boxes, computed on a prorate base of 1.022% of such total.

Similarly, for the week beginning 12:01 A. M.

June 22, 1941 to 12:01 A. M. June 29, 1941, the Secretary fixed a total quantity at 233,450 packed boxes, or 575 cars (on the basis of 406 packed boxes to the car), and the allotment of defendant at 2385 packed boxes, computed on a prorate base of 1.022% of such total. On June 24, 1941, on the recommendation of said committee, the Secretary increased the total quantity fixed for the week beginning June 22, 1941, from 575 cars to 700 cars, and the allotment of defendant to 2904 packed boxes, which was subsequently adjusted to 2498 packed boxes for an alleged over-shipment of 406 packed boxes.

Similarly, for the week beginning 12:01 A. M. June 29, 1941 to 12:01 July 6, 1941, the Secretary fixed a total quantity at 243,600 packed boxes, and the allotment of defendant at 2300 packed boxes, computed on a pro-rate base of .944% of such total. On July 2, 1941, on the recommendation of said committee, the Secretary increased the total quantity fixed for the week beginning June 29, 1941, from 600 cars to 700 cars, and the allotment of defendant to 2683 packed boxes, which was subsequently adjusted to 2692 packed boxes, by adding 16 for an alleged under-shipment and deducting 7 for borrowings paid back during the previous week.

Similarly, for the week beginning 12.01 July 6, 1941 to 12.01 July 13, 1941, the Secretary fixed the total quantity at 284,200 packed boxes and the allotment of defendant at 2683 packed boxes, on a prorate base of .944% of such total, which allot-

ment [35] was subsequently adjusted to 2428 packed boxes by deducting 255 boxes for alleged over-shipment.

Similarly, for the week beginning 12.01 A. M. July 13, 1941 to 12.01 July 20, 1941, the Secretary fixed the total quantity at 263,900 packed boxes and the allotment of the defendant at 2391 packed boxes, computed on a prorate base of .906% of such total, which allotment was subsequently adjusted to 2586 packed boxes because of an alleged under-shipment of 195 boxes in the previous week.

Similarly, for the week beginning 12.01 A. M. July 20, 1941 to 12.01 July 27, 1941, the Secretary fixed the total quantity at 233,450 packed boxes and the allotment of defendant at 2115 packed boxes, computed on a prorate base of .906% of such total, which allotment was subsequently reduced to 1728 packed boxes because of an alleged over-shipment of 387 packed boxes in the previous week.

Similarly, for the week beginning 12.01 A. M. July 27, 1941 to 12.01 August 3, 1941, the Secretary fixed the total quantity at 223,300 packed boxes and the allotment of defendant at 2300 packed boxes computed on a prorate base of 1.030% of such total. On July 29, 1941, on the recommendation of said committee, the Secretary increased the total quantity fixed for the week beginning July 27, 1941, at 550 cars to 700 cars, and the allotment of defendant to 2927 packed boxes, which was subsequently changed to 5367 packed boxes because of an alleged under-shipment of 4 boxes and loans of 2436 packed boxes.

Similarly, for the week beginning 12.01 A. M. August 3, 1941 to 12.01 August 10, 1941, the Secretary fixed the total quantity at 243,600 packed boxes and the allotment of defendant at 2509 packed boxes, computed on a prorate base of 1.030% of such total. On August 5, 1941, on the recommendation of said committee, the Secretary increased the total quantity fixed for the week [36] beginning August 3, 1941, from 600 cars to 700 cars, and the allotment of defendant to 2927 packed boxes, which was subsequently changed to 1709 packed boxes because of an alleged forfeit of 107 packed boxes and borrowings paid back of 1218 boxes.

Similarly, for the week beginning 12.01 A. M. August 10, 1941 to 12.01 A. M. August 17, 1941 the Secretary fixed the total quantity at 284,200 packed boxes, and the allotment of defendant at 3180 packed boxes, computed on a prorate base of 1.119% of such total, which allotment was subsequently adjusted to 1734 packed boxes because of an alleged over-shipment of 228 boxes and borrowings paid back of 1218 boxes.

Similarly, for the week beginning 12.01 A. M. August 17, 1941 to 12.01 A. M. August 24, 1941 the Secretary fixed the total quantity at 162,400 packed boxes, and the allotment of defendant at 1817 packed boxes, computed on a prorate base of 1.119% of such total, which was subsequently adjusted to 1411 packed boxes by adding 812 boxes for under-shipment and deducting 1218 boxes for borrowings paid back.

Similarly, the Secretary has fixed total quantities and the allotments of defendant for each week subsequent to the week ending at 12.01 A. M. August 24, 1941, in varying amounts, for which certificates of allotments and certificates of adjusted allotments have been issued by said committee.

X.

Since June 18, 1941 defendant has received a large number of orders, including orders from regular customers which it could and would have filled in the ordinary course of business, but which it was prevented from filling by reason of Order No. 53 and the operation thereof by said committee and the Secretary.

Defendant has also been prevented from selling large quantities of lemons at prices which would return profit to its growers, by reason of said order and the operation thereof by said committee [37] and the Secretary, in addition to orders received which it was unable to fill. Defendant is informed and believes and on that ground avers, that such orders and quantities as it has been so prevented from filling, selling and shipping, were filled, sold and shipped by the Exchange.

Defendant is informed and believes and therefore and on that ground alleges, that it will be prevented, so long as said Order remains in effect and so long as the same continues to be operated by said committee and by the Secretary on the recommendation of said committee, from filling a large number of orders received from its customers, and in addi-

tion thereto, from selling lemons for which there is a demand, and which could be sold by it at prices returning profit to its growers; that by reason of said Order and the operation thereof, defendant is losing, and will continue to lose, customers who, as defendant is informed and believes and therefore and on that ground alleges, will become customers of its principal competitor, the Exchange; all to its irreparable loss and damage.

XI.

There is no profitable outlet for the sale of approximately 90% of the lemons produced in California, including lemons handled by defendant, except in interstate commerce. To accommodate its interstate business, facilities have been developed for the packing and shipment of lemons, including the packing houses, storage and other facilities of defendant, in which large sums of money have been invested. Defendant's storage facilities are inadequate for operation under Order No. 53. In order to operate competitively under said Order, it is necessary for defendant to provide additional storage, at a cost of many thousands of dollars, which would otherwise be unnecessary. By reason of said order, defendant has been, is being, [38] and will continue to be, put to large expense in the rehandling of lemons, which would otherwise be unnecessary.

XII.

Said Order as applied and administered by said

committee, and by the Secretary on the recommendations of said committee, is unreasonable, arbitrary, unjust and discriminatory as against defendant, in that total weekly shipments have been fixed in unreasonably low amounts and amounts much less than the market would absorb at prices which would provide reasonable and profitable returns to the growers whose lemons are handled by defendant.

Defendant handles green, silver and tree-ripe (yellow) lemons for its producer principals. Because of the short storage life of tree-ripe and silver lemons, it is necessary to ship them in a very much shorter period after they are picked than is the case with green lemons; otherwise such tree-ripes and silvers will decay and become unfit for disposal in fresh fruit trade channels. Because of the unreasonably low shipments permitted by **said committee**, and the Secretary, and the unreasonably low and discriminatory allotments allowed defendants, it has been compelled to send a large quantity of lemons to by-products and otherwise dispose thereof in other than fresh fruit channels, and it will be unable to market quantities of tree-ripes and silvers in fresh fruit form, and will not be given the benefit thereof in the computation of its allotments, except during their brief storage life; by reason whereof defendant has suffered, and is now suffering, and will continue to suffer great and irreparable loss and damage; its costs of operation have been, are being, and will

be unnecessarily and unreasonably increased by the operation of said order; it has been and is being deprived of its customers and trade outlets; all to defendant's great injury and damage and the unjust enrichment of the Exchange.

XIII.

By reason of the premises said Order and the orders of the [39] Secretary implementing said Order are, and each thereof is, unjust, unreasonable, arbitrary and discriminatory as to this defendant, and said Order and the Orders of the Secretary implementing said Order, each and all, constitute an unwarranted and unlawful exercise of the police power, and are violative of the Fifth Amendment to the Constitution of the United States, in that they deprive defendant of its property without due process of law.

Wherefore, defendant prays that plaintiff take nothing by its action, and that this defendant be dismissed hence with its costs.

GUY RICHARDS CRUMP,

EMMET H. WILSON, JR.,

By GUY RICHARDS CRUMP,

Attorneys for Defendant.

Answer duly verified by C. I. Cartwright, Secretary-Treasurer of La Verne Cooperative Citrus Association, on the 24th day of October, 1941, before Hertha N. Ebert, Notary Public.

[Endorsed]: Filed October 31, 1941. [40]

Within the time allowed by law and the stipulation of the parties, defendant Glendora Co-Operative Citrus Association, a corporation, served and filed its verified answer, which was and is in the words and figures following, to-wit:

[Title of the Court and Cause in the LaVerne Case.]

ANSWER OF DEFENDANT GLENDORA CO-
OPERATIVE CITRUS ASSOCIATION.

Answering the complaint herein defendant Glendora Co-Operative Citrus Association (hereinafter referred to as "defendant") admits, denies and avers:

I.

Admits the allegations of paragraph I.

II.

Admits the allegations of paragraph II and avers that LaVerne Co-Operative Citrus Association is a co-operative marketing corporation.

III.

Admits the allegations of paragraph III and avers that defendant is a co-operative marketing corporation.

IV. to X.

Paragraphs IV. to X., both inclusive, in this answer are the same as the correspondingly numbered paragraphs IV. to X., both inclusive, in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in the La Verne Case.

XI.

Answering the allegations of paragraph XI of the complaint, admits that defendants Glendora Co-Operative Citrus Association, LaVerne Co-Operative Citrus Association and Upland Orchards, Inc., [41] are, and each of them is, handlers of lemons, engaged in the handling of lemons as the terms are defined in the Order. Admits that Glendora Co-Operative Citrus Association on or about May 7, 1941, made and filed with the said Committee a written application for a prorated base and for allotments. But avers that all applications and other documents and papers filed by defendant with the Committee were filed under protest and without waiving any rights of the defendant. Defendant has no information or belief sufficient to enable it to answer the remaining allegations of paragraph XI of the complaint and therefore and on that ground denies each and all thereof.

XII. and XIII.

Paragraphs XII and XIII, both inclusive, in this answer are the same as the correspondingly numbered paragraphs XII and XIII, both inclusive, in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in the La Verne Case.

XIV.

Defendant has no information or belief sufficient to enable it to answer the allegations of paragraph XIV, and therefore and on that ground denies each and all thereof.

XV.

Paragraph XV. in this answer is the same as the correspondingly numbered paragraph XV. in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in the La Verne Case.

XVI.

Defendant has no information or belief sufficient to enable it to answer the allegations of paragraph XVI. and therefore and on that ground denies each and all thereof.

XVII.

Denies each and all of the allegations of paragraph XVII, except that it admits that "For the said weekly regulation period [42] beginning June 1, 1941, and ending June 8, 1941, the Secretary fixed an allotment for defendant Glendora Co-Operative Citrus Association at two hundred eighty-eight (288) packed boxes of lemons".

XVIII.

Denies each and all of the allegations of paragraph XVIII.

XIX.

Answering the allegations of paragraph XIX, avers that during said weekly period beginning June 1, 1941, and ending June 8, 1941, defendant shipped and handled eight hundred eighty-five (885) packed boxes of lemons, as follows:

Date	From	To	Boxes
June 2	Glendora, Calif.	Cleveland, Ohio	406
2	Azusa Ave., Calif.	Hickory, N. C.	96
3	Glendora, Calif.	Dallas, Texas (truck)	21
3	Glendora, Calif.	Dallas, Texas (truck)	114
6	Glendora, Calif.	Kansas City, Mo.	144
6	Glendora, Calif.	Waverly, N. J.	104

Except as specifically averred herein, defendant denies each and all of the allegations of paragraph XIX.

XX. to XXVI.

Paragraphs XX. to XXVI, both inclusive, in this answer are the same as the correspondingly numbered paragraphs XX to XXVI, both inclusive, in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in the La Verne Case.

For a Separate and Further Defense Defendant Avers:

I. to V.

Paragraphs I. to V., both inclusive of the Separate and Further Defense in this answer are the same as the correspondingly numbered paragraphs I. to V., both inclusive, in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in its separate and further defense in the La Verne Case. [43]

VI.

Defendant is a co-operative marketing corporation having its principal place of business at Glendora, California. For more than ten years last past it has been engaged in the business of selling (through a

central marketing organization) and shipping lemons in interstate commerce. Defendant handles lemons for approximately 35 growers, who have a producing acreage of approximately 183 acres in California.

VII.

Paragraph VII. of the Separate and Further Defense in this answer is the same as the correspondingly numbered paragraph VII. in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in its separate and further defense in the La Verne Case.

VIII.

Paragraph VIII. of the Separate and Further Defense in this answer is the same as the correspondingly numbered paragraph VIII. in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in its separate and further defense in the La Verne Case.

IX.

Following the effective date of said Order, an administrative committee, as provided for therein, was appointed by the Secretary, which committee thereafter recommended to the Secretary volume regulation of shipments, as provided in said Order. Thereupon the Secretary, pursuant to recommendations of said committee, fixed the total quantity of lemons which might be handled in the current of interstate commerce for the weekly period beginning 12:01 A.M., June 1, 1941, to 12:01 A.M., June 8, 1941, at

263,900 packed boxes, and the allotment of defendant at 288 packed boxes, computed on a prorate base of .109% of such total quantity.

Similarly for the week beginning 12:01 A.M., June 8, 1941, [44] to 12:01 A.M., June 15, 1941, the Secretary fixed the total quantity at 233,450 packed boxes, and the allotment of defendant at 255 packed boxes, computed on a prorate base of .109% of such total, which allotment was subsequently adjusted to minus 151 packed boxes for alleged over-shipment.

Similarly for the week beginning 12:01 A.M., June 15, 1941, to 12:01 A.M., June 22, 1941, the Secretary fixed the total quantity at 223,300 packed boxes, and the allotment of defendant at 217 packed boxes, computed on a prorate base of .097% of such total, which allotment was subsequently adjusted to 66 packed boxes by deducting 151 packed boxes for alleged over-shipment.

Similarly for the week beginning 12:01 A.M., June 22, 1941, to 12:01 A.M., June 29, 1941, the Secretary fixed the total quantity at 233,450 packed boxes, or 575 cars (on the basis of 406 packed boxes to the car), and the allotment of defendant at 227 packed boxes, computed on a prorate base of .097% of such total. On June 24, 1941, on the recommendation of said committee, the Secretary increased the total quantity fixed for the week beginning June 22, 1941, from 575 cars to 700 cars, and the allotment of defendant to 276 packed boxes, which was subsequently adjusted to minus 130 boxes for alleged over-shipments of 406 boxes.

Similarly for the week beginning 12:01 A.M., June 29, 1941, to 12:01 A.M., July 6, 1941, the Secretary fixed the total quantity at 243,600 packed boxes, and the allotment of defendant at 171 packed boxes, computed on a prorate base of .070% of such total. On July 2, 1941, on the recommendation of said committee, the Secretary increased the total quantity fixed for the week beginning June 29, 1941, from 600 to 700 cars, and the allotment of defendant to 200 packed boxes, which was subsequently adjusted to 70 packed boxes by deducting 130 packed boxes for alleged over-shipments.

Similarly for the week beginning 12:01 A.M., July 6, [45] 1941, to 12:01 A.M., July 13, 1941, the Secretary fixed the total quantity at 284,200 packed boxes, and the allotment of defendant at 200 packed boxes, computed on a prorate base of .070% of such total, which was subsequently adjusted to 270 packed boxes, based upon an alleged under-shipment of 70 packed boxes.

Similarly for the week beginning 12:01 A.M., July 13, 1941, to 12:01 A.M., July 20, 1941, the Secretary fixed the total quantity at 263,900 packed boxes, and the allotment of defendant at 142 packed boxes, computed on a prorate base of .054% of such total, which allotment was subsequently changed by adding 34 packed boxes for an alleged under-shipment, and deducting 34 packed boxes for an alleged forfeit, leaving the amount of the allotment at 142 packed boxes.

Similarly for the week beginning 12:01 A.M., July 20, 1941, to 12:01 A.M., July 27, 1941, the Sec-

retary fixed the total quantity at 233,450 packed boxes, and the allotment of defendant at 126 packed boxes, on a prorate base computed at .054% of such total, which allotment was subsequently adjusted to 201 packed boxes because of an alleged under-shipment of 75 packed boxes.

Similarly for the week beginning 12:01 A.M., July 27, 1941, to 12:01 A.M., August 3, 1941, the Secretary fixed the total quantity at 223,300 packed boxes, and the allotment of defendant at 110 packed boxes, computed on a prorate base of .049% of such total. On July 29, 1941, on the recommendation of said committee, the Secretary increased the total quantity fixed for the week beginning July 27, 1941, from 550 to 700 cars, and the allotment of defendant to 140 packed boxes, which was subsequently changed to 266 packed boxes because of an alleged under-shipment of 201 packed boxes and an alleged forfeit of 75 boxes.

Similarly for the week beginning 12:01 A.M., August 3, 1941, to 12:01 A.M., August 10, 1941, the Secretary fixed the [46] total quantity at 243,600 packed boxes, and the allotment of defendant at 119 packed boxes, on a prorate base of .049% of such total. On August 5, 1941, on the recommendation of said committee, the Secretary increased the total quantity for the week beginning August 3, 1941, from 600 to 700 cars, and the allotment of defendant to 139 packed boxes, which was subsequently adjusted to 114 packed boxes because of an alleged over-shipment of 25 packed boxes.

Similarly for the week beginning 12:01 A.M.,

August 10, 1941, to 12:01 A.M., August 17, 1941, the Secretary fixed the total quantity at 284,200 packed boxes, and the allotment of defendant at 128 packed boxes, computed on a prorate base of .045% of such total, which allotment was subsequently adjusted to 138 packed boxes because of an alleged under-shipment of 10 boxes.

Similarly for the week beginning 12:01 A.M., August 17, 1941, to 12:01 A.M., August 24, 1941, the Secretary fixed the total quantity at 162,400 packed boxes, and the allotment of defendant at 73 packed boxes, on a prorate base of .045% of such total, which was subsequently adjusted to 97 packed boxes because of an alleged under-shipment of 34 boxes, less an alleged forfeit of 10 boxes.

Similarly the Secretary has fixed total quantities and the allotments of defendant for each week subsequent to the week ending at 12.01 A.M., August 24, 1941, in varying amounts, for which certificates of allotment and certificates of adjusted allotments have been issued by said committee.

X.

Since June 18, 1941, defendant has been prevented by said Order and the operation thereof from filling numerous orders, including orders from regular customers of Mutual Orange Distributors which it could otherwise have filled in the ordinary course of business. Defendant has also been prevented from selling large [47] quantities of lemons at prices which would return profit to its growers, by reason of said Order and the operation thereof

by said committee and the Secretary, in addition to orders which it was unable to fill. Defendant is informed and believes and on that ground avers that such orders and quantities as it has been so prevented from filling, selling and shipping, were filled, sold and shipped by the Exchange.

The remaining portion of this Paragraph X. in this answer is the same as the last said paragraph in paragraph X. in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in its separate and further defense in the La Verne Case.

XI.

Paragraph XI. of the Separate and Further Defense in this answer is the same as the correspondingly numbered paragraph XI. in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in its separate and further defense in the La Verne Case.

XII.

Said Order as applied and administered by said committee, and by the Secretary on the recommendation of said committee, is arbitrary, unreasonable, unjust and discriminatory as against defendant, in that, as defendant is informed and believes and on that ground avers, competitors of defendant have been given excessive advance credits for lemons marketed in other than fresh fruit channels, advance credits for unmerchantable lemons, and excessive prorated bases, with the result that such com-

petitors have received larger allotments than they are entitled to under said Order, and that defendant has received correspondingly smaller allotments than it is entitled to; also because certain handlers have been, and are being, permitted to ship without being required to limit their shipments. [48]

XIII.

Said Order as applied and administered by said committee, and by the Secretary on the recommendations of said committee, is unreasonable, arbitrary, unjust and discriminatory as against defendant, in that total weekly shipments have been fixed in unreasonably low amounts and amounts much less than the market would absorb at prices which would provide reasonable and profitable returns to the growers whose lemons are handled by defendant.

Defendant handles green, silver and tree-ripe (yellow) lemons for its producer principals. Because of the short storage life of tree-ripe and silver lemons, it is necessary to ship them in a very much shorter period after they are picked than is the case with green lemons; otherwise such tree-ripes and silvers will decay and become unfit for disposal in fresh fruit trade channels. Because of the unreasonably low shipments permitted by said committee, and the Secretary, and the unreasonably low and discriminatory allotments allowed defendant, it has been compelled to send a large quantity of lemons to by-products and otherwise dispose thereof in other than fresh fruit channels, and it will be un-

able to market quantities of tree-ripes and silvers in fresh fruit form, and will not be given the benefit thereof in the computation of its allotments, except during their brief storage life; by reason whereof defendant has suffered, is now suffering, and will continue to suffer great and irreparable loss and damage; its costs of operation have been, are being, and will be unnecessarily and unreasonably increased by the operation of said Order; it has been and is being deprived of its customers and trade outlets; all to the defendant's great injury and damage and the unjust enrichment of the Exchange.

XIV.

Paragraph XIV. of the Separate and Further Defense in this answer is the same as the paragraph numbered XIII. in the answer of [49] the defendant La Verne Co-Operative Citrus Association, a corporation, in its separate and further defense in the La Verne Case.

Prayer and signature of attorneys is the same as in the answer of the defendant La Verne Co-Operative Citrus Association, a corporation, in the La Verne Case.

Answer duly verified by O. W. Cave, Treasurer of Glendora Co-Operative Citrus Association, on the 31st day of October, 1941, before Hertha N. Ebert, Notary Public.

[Endorsed]: Filed October 31, 1941. [50]

[Title of District Court and Cause in the La Verne Case.]

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

The above entitled cause having been consolidated for trial by order of the Court, and the restraining order heretofore granted against all the defendants together with the application of plaintiff for a preliminary injunction having been duly continued until the trial of said cause, and the trial of said cause and hearing upon said application having regularly come on for hearing and trial, and hearing and trial having been had on the 31st day of March, 1942, and the 2nd day of April, 1942, by the Court without a jury, upon the verified complaints, answers and stipulations filed therein, and upon affidavits filed in support of and in opposition to the applica- [51] tion for preliminary injunction, and the Court having heard argument of all counsel and being fully advised in the premises hereby makes the following findings of fact and conclusions of law in said cause:

FINDINGS OF FACT

I.

This action is brought by the United States of America against the defendants, La Verne Co-Operative Citrus Association, a California corporation, with its principal place of business at La Verne, Los Angeles County, California; the Glen-

dora Co-Operative Citrus Association, a California corporation, whose principal place of business is Glendora, California; and Upland Orchards, Inc., a California corporation with its principal place of business at Upland, California.

II.

The proceeding was brought under Section 8a (6) of the Act of May 12, 1933 (48 Stat. 31, U.S.-C.A. Title 7, Section 608a (6) as amended August 24, 1934, 49 Stat. 672) and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937, which invested the District Courts of the United States with jurisdiction specifically to enforce and to prevent and restrain any person from violating any order issued by the Secretary of Agriculture pursuant to the provisions of Title I of said Act.

III.

The purpose of this proceeding is to specifically enforce the provisions of a certain Order known as Order No. 53, "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which was issued by the Secretary of Agriculture of the United States pursuant to Section 8c of Title I of said Act, and also to prevent and restrain the defendants from handling lemons in the current of interstate commerce or in foreign commerce with Canada, or so as directly to burden, obstruct, or affect such commerce in such lemons, in violation of the provisions of the Order. [52]

IV.

The Secretary of Agriculture gave to all interested persons, including the defendants, and to each of them, on the 3rd day of October, 1940, notice of a public hearing to be held in the City of Los Angeles, State of California, on October 21, 1940, with respect to a proposed Order Regulating the Handling of Lemons Grown in the States of California and Arizona. Said hearing was held on the said 21st day of October, 1940.

V.

Subsequent to said hearing, the Secretary issued said Order No. 53 on the 5th day of April, 1941, which, by its terms, became effective April 10th, 1941, and has been continuously in effect thereafter, up to and including the present time.

The said Order No. 53 recites and provides:

“The Secretary, having reason to believe that the issuance of an order would tend to effectuate the declared policy of the act with respect to the establishment and maintenance of such orderly marketing conditions for lemons grown in the States of California and Arizona as would establish prices to the producers of such lemons at a level that would give such lemons a purchasing power with respect to articles that the producers thereof buy equivalent to the purchasing power of such lemons during the base period, August 1919—July 1929, conducted a public hearing at Los Angeles, Calif., on October 21, 1940, pursuant to

due notice given to all interested parties on October 3, 1940, on a proposed order regulating such handling of such lemons as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects such commerce in such lemons, at which hearing all interested persons in attendance were afforded due opportunity to be heard concerning the proposed order. [53]

“In accordance with the provisions of the act, it has been found and proclaimed that the purchasing power of lemons grown in the States of California and Arizona during the period August 1909—July 1914 cannot be satisfactorily determined from available statistics of the Department of Agriculture for the period August 1919—July 1929, and that the period August 1919—July 1929 is the base period to be used in connection with this order in determining the purchasing power of such lemons.

“Upon the basis of the evidence introduced at the hearing and the record thereof, it is hereby found:

“(1) That the terms and provisions of this order prescribe, so far as practicable, such different terms, applicable to different production areas, as are necessary to give due recognition to the difference in production and marketing of such lemons;

“(2) That this order is limited in its application to the smallest regional production area

that is practicable, consistently with carrying out the declared policy of the act, and that the issuance of several orders applicable to any subdivision of such regional production area would not effectively carry out the declared policy of the act; and

“(3) That this order and all the terms and conditions thereof will tend to effectuate the declared policy of the act with respect to lemons grown in the States of California and Arizona by establishing and maintaining such orderly marketing conditions therefor as will establish prices to the producers hereof at a level that will give such lemons a purchasing power with respect to articles that the producers thereof buy equivalent to the purchasing power of such lemons in the base period, and by protecting the interest of the consumer by (a) approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the [54] current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and by (b) authorizing no action which has for its purpose the maintenance of prices to producers of such lemons above the level which it is declared in the act to be the policy of Congress to establish.

“It is further found:

“(1) That a marketing agreement regulating the handling of lemons grown in the States of California and Arizona, executed on the 5th day of April, 1941, upon which a hearing was held on October 21, 1940, was signed by handlers (excluding co-operative associations of producers who were not engaged in processing, distributing, or shipping the lemons covered by this order) who, during the period November 1, 1939—October 31, 1940, handled not less than eighty (80) percent of the volume of such lemons covered by this order;

“(2) That this order regulates the handling of such lemons in the same manner as the aforesaid marketing agreement, and that it is made applicable only to persons in the respective classes of industrial and commercial activity specified in the said marketing agreement;

“(3) That the issuance of this order is favored by producers who, during the period of November 1, 1939, to October 31, 1940, both dates inclusive (which is hereby determined to be a representative period), produced for market within the States of California and Arizona at least two-thirds ($2/3$) of the volume of lemons produced for market within such production area within the said period; and

“(4) That the issuance of this order is favored by three-fourths ($3/4$) of the producers who, during the aforesaid representative period of November 1, 1939, to October 31, 1940, have

been engaged, within the States of California and Arizona, in [55] the production for market of lemons.

“It Is, Therefore, Ordered, that such handling of lemons grown in the States of California and Arizona as is in the current of commerce between the State of California and any point outside thereof in the United States or in Canada, or between the State of Arizona and any point outside thereof in the United States or in Canada, from and after the date hereinafter specified, shall be in conformity to and in compliance with the terms and conditions of this order.”

VI.

The Order is applicable to handlers of lemons grown in the States of California and Arizona and regulates the handling of such lemons in the same manner as a Marketing Agreement executed by the Secretary on April 5, 1941.

VII.

Subsequent to the effective date of the Order and prior to April 23, 1941, the Secretary of Agriculture established a Lemon Administrative Committee and selected the members thereof, which said Committee is now and has, at all times since the establishment thereof, exercised the powers and performed the duties given and required by the Order.

VIII.

The defendants herein, and each of them, are handlers of lemons and engaged in the handling of lemons as those terms are defined in the said Order.

IX.

At the time of the institution of the foregoing proceedings herein there was pending on behalf of the defendants herein a petition before the Secretary of Agriculture for a review under Section 608c (15) (A) of Title 7, U.S.C.A., praying for a modification or exemption from said Order No. 53; said petition has now been dismissed by the Secretary of Agriculture and there is now pending in the United States [56] District Court for the Southern District of California, Central Division, an action by the aforesaid defendants pursuant to Section 608c (15) (B) of Title 7, U.S.C.A.

X.

The defendant La Verne Co-Operative Citrus Association, and the defendant Upland Orchards, Inc., on or about May 2, 1941, made and filed with the said Committee their respective written applications for a pro rate base and for allotments, and the defendant Glendora Co-Operative Citrus Association, on or about May 7, 1941, filed with the Committee its written application for a pro rate base and for allotments.

XI.

On May 31, 1941, upon the recommendation of said Lemon Administrative Committee and upon

other available information, the Secretary of Agriculture fixed and determined the pro rate bases for all handlers of lemons who applied for a pro rate base and allotment, including the defendants and each of them, and established a weekly regulation period for the handling and shipping of lemons, commencing June 1, 1941 and ending June 8, 1941, and fixed the quantity of lemons which could be handled and shipped from California and Arizona in interstate commerce and foreign commerce with Canada, for said weekly period, at 650 carloads of lemons; and fixed the allotment for the defendant La Verne Co-Operative Citrus Association at 3557 packed boxes of lemons; and for the defendant Glendora Co-Operative Citrus Association an allotment at 288 packed boxes of lemons; and for the defendant Upland Orchards, Inc., an allotment at 124 packed boxes of lemons, with an over-shipment privilege to La Verne Co-Operative Citrus Association of 406 packed boxes; and to Glendora Co-Operative Citrus Association of 406 packed boxes; and to Upland Orchards, Inc., of 406 packed boxes.

The defendant La Verne Co-Operative Citrus Association, during said weekly period beginning June 1, 1941 and ending June 8, [57] 1941, shipped 6561 packed boxes of lemons grown in California, in interstate commerce; and the defendant Glendora Co-Operative Citrus Association shipped 935 packed boxes of lemons grown in California, in interstate commerce; and the defendant Upland Orchards, Inc. shipped 1624 packed boxes of lemons grown in California, in interstate commerce.

XII.

The defendants, and each of them, since the effective date of said Order No. 53, have failed and refused to comply with the terms of said Order.

XIII.

The non-compliance or continued non-compliance by the defendants, and each of them, with provisions of the Order is, and will be, injurious to interstate commerce and foreign commerce with Canada, in lemons, and to growers, handlers and consumers of such fruit, and threatens the stability of such interstate and foreign commerce in lemons, which in turn will incite other handlers of lemons to violate the provisions of the said Order; and also incite handlers, subject to the Orders issued or which may hereafter be issued by the Secretary of Agriculture, to violate the provisions thereof. Such violations will tend to thwart the National policy of improving the marketing conditions with respect to the handling of lemons in interstate and foreign commerce.

CONCLUSIONS OF LAW

As conclusions of law under the provisions of law applicable to the foregoing Findings of Fact, the Court concludes as follows:

I.

That it has jurisdiction over all of the parties and the subject matter.

II.

That the notice given by the Secretary of Agriculture on [58] the 3rd day of October, 1940, of public hearing to be held in the City of Los Angeles, State of California, on October 21, 1940, with respect to a proposed Order regulating the handling of lemons grown in the States of California and Arizona, is, in so far as this action is concerned, conclusively presumed to have been duly and regularly made, and is valid.

III.

In so far as the proceedings herein are concerned, it is conclusively presumed that the hearing was held pursuant to and in accordance with said notice and General Regulations Series A, No. 1, of the Agricultural Adjustment Administration, United States Department of Agriculture, and that all interested persons, including the defendants herein, and each of them, were afforded full opportunity to be heard concerning the proposed Order.

IV.

In so far as these proceedings are concerned it is conclusively presumed that the Secretary found, from the evidence introduced at said hearing and the record thereof,—

“(1) That the terms and provisions of this order prescribe, so far as practicable, such different terms, applicable to different production areas, as are necessary to give due recognition to the difference in production and marketing of such lemons;

“(2) That this order is limited in its application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act, and that the issuance of several orders applicable to any subdivision of such regional production area would not effectively carry out the declared policy of the act; and

“(3) That this order and all the terms and conditions thereof will tend to effectuate the declared policy of the act with respect to lemons grown in the States of California and [59] Arizona by establishing and maintaining such orderly marketing conditions therefor as will establish prices to the producers thereof at a level that will give such lemons a purchasing power with respect to articles that the producers thereof buy equivalent to the purchasing power of such lemons in the base period, and by protecting the interest of the consumer by (a) approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and by (b) authorizing no action which has for its purpose the maintenance of prices to producers of such lemons above the level which it is declared in the act to be the policy of Congress to establish by a gradual

correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and by (b) authorizing no action which has for its purpose the maintenance of prices to producers of such lemons above the level which it is declared in the act to be the policy of Congress to establish.

“(4) That a marketing agreement regulating the handling of lemons grown in the States of California and Arizona, executed on the 5th day of April, 1941, upon which a hearing was held on October 21, 1940, was signed by handlers (excluding cooperative associations of producers who were not engaged in processing, distributing, or shipping the lemons covered by this order) who, during the period November 1, 1939—October 31, 1940, handled not less than eighty (80) percent of the volume of such lemons covered by this order; [60]

“(5) That this order regulates the handling of such lemons in the same manner as the aforesaid marketing agreement, and that it is made applicable only to persons in the respective classes of industrial and commercial activity specified in the said marketing agreement;

“(6) That the issuance of this order is favored by producers who, during the period of November 1, 1939, to October 31, 1940, both dates inclusive (which is hereby determined to be a representative period), produced for mar-

ket within the States of California and Arizona at least two-thirds ($2/3$) of the volume of lemons produced for market within such production area within the said period; and

“(7) That the issuance of this order is favored by three-fourths ($3/4$) of the producers who, during the aforesaid representative period of November 1, 1939, to October 31, 1940, have been engaged, within the States of California and Arizona in the production for market of lemons.”

V.

That the said Order No. 53 is applicable to all handlers of lemons grown in the States of California and Arizona shipped in interstate commerce or into the Dominion of Canada, from and after 12:01 o'clock a.m. on April 10, 1941.

VI.

In so far as these proceedings are concerned, it is conclusively presumed that the establishment by the Secretary of Agriculture of the Lemon Administrative committee and the selection of its members is in accordance with law, and valid, and that said Committee has at all times since its establishment legally exercised only the powers and performed the duties given and required by law.

VII.

The pro rate bases issued to each of the defendants herein, in so far as this particular action is

concerned, are conclusively presumed to have been regularly made and are valid. [61]

VIII.

The allotments issued to each of the defendants, in so far as this particular form of action is concerned, are conclusively presumed to have been regularly made and are valid.

IX.

The shipment by each of the said defendants herein of lemons grown in the State of California for interstate commerce, in excess of their respective said allotments, was in violation of law.

X.

The United States of America is entitled to a permanent injunction restraining the defendants, and each of them, their officers, agents, servants, employees, attorneys, assignees, and each of them, and all persons acting on behalf of said defendants or any of them, or claiming to act on behalf thereof, or any person in activity, consort, or participation of said defendants, or any of them, from handling lemons in violation of the terms and provisions of said Order No. 53, and to a judgment for costs in this proceeding.

Dated this 29th day of April, 1942.

BEN HARRISON

United States District Judge

Approved as to Form:

GUY RICHARDS CRUMP

EMMET H. WILSON, JR.

By

Attorneys for Defendants

Presented by:

WM. W. WORTHINGTON

Assistant U. S. Attorney

Attorney for Plaintiff

[Endorsed]: Filed April 29, 1942. [62]

In the District Court of the United States in and
for the Southern District of California Central
Division

No. 1596-BH—Civil

UNITED STATES OF AMERICA,

Plaintiff

vs.

LA VERNE CO-OPERATIVE CITRUS ASSO-
CIATION, a corporation; GLENDORA CO-
OPERATIVE CITRUS ASSOCIATION, a
corporation; and UPLANDS ORCHARDS,
INC., a corporation,

Defendants.

DECREE FOR PERMANENT INJUNCTION

The above entitled cause having been consolidated by order of the court and the restraining order herein having been continued until the hearing of the application for a preliminary injunction and filed in this action, all having come on regularly for hearing on the 31st day of October, 1941, and the 2nd day of April, 1942, upon the verified complaints, answers and stipulations, and the affidavits filed in support of and in opposition to the applications for preliminary injunctions, and the court having heard arguments of all counsel, and on the 29 day of April, 1942, having made and filed its written findings of fact and conclusions of law, and it appearing to the court that:

(a) The complaints herein seek to enforce and prevent [63] violations of Public No. 10, 73rd Congress (May 12, 1933) as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and of that order issued by the Secretary of Agriculture of the United States, after hearings held upon due notice and by virtue of the terms of said act and rules and regulations appertaining to such matters entitled "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order became effective on the 10th day of April, 1941, and has ever since said date and is now in full force and effect and operation.

(b) The defendants and each of them have

violated said order of the secretary in that they and each of them have shipped lemons grown in the state of California into interstate commerce in excess of the allotments fixed for them by the Secretary of Agriculture pursuant to said order.

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that the said defendants and each of them, their officers, agents, employees, attorneys and assigns, and each of them, and all persons acting on behalf of said defendants or any of them or claiming to act on behalf thereof, or any person in active concert or participation with said defendants, or any of them, be restrained and enjoined from handling or shipping lemons grown in the states of California and Arizona in interstate commerce or to any place in the Dominion of Canada, in violation of, or contrary to the terms and provisions of the "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order was issued by the Secretary [64] of Agriculture on the 5th day of April, 1941, until further order of this court or until such time as an order or judgment may be entered in the United States District Court for the Southern District of California, Central Division, in which certain of these defendants have brought an action for a review of the secretary's denial of their petition filed pursuant to Subsection 15 of Section 608c, Title 7, U.S.C.A., which shall determine that said Order No. 53 is invalid or inapplicable to the plaintiffs therein.

It Is Further Ordered that plaintiff have costs herein.

Dated: Los Angeles, California, this 29 day of April, 1942.

BEN HARRISON

Judge U. S. District Court

The above and foregoing judgment was filed with the Clerk of said Court, and duly entered and docketed on the 29th day of April, 1942.

[Endorsed]: Filed and Entered April 29, 1942.

[65]

THE FOUR REMAINING CASES, NAMELY,
THE VENTURA CASE, THE WHITTIER
CASE, THE INDEX CASE, and THE
CHULA VISTA CASE.

THE COMPLAINTS THEREIN.

The Complaint in each of the remaining four cases, namely, the Ventura Case, (filed June 18, 1941), the Whittier Case, (filed June 28, 1941), the Index Case, (filed July 3, 1941), and the Chula Vista Case (filed June 24, 1941), contains the title of the Court and cause in the particular case, and otherwise is the same in form and substance as the complaint in the La Verne Case, hereinbefore set forth in full, with the exception that the respective weekly regulation periods, the fixed weekly allotments and the quantities of lemons shipped by each

respective defendant during such regulation periods in interstate or foreign commerce, including the amounts shipped in excess of said allotments and in alleged violation of said Order, vary as to each respective defendant.

TEMPORARY RESTRAINING ORDERS AND ORDERS TO SHOW CAUSE IN SAID FOUR REMAINING CASES.

A Temporary Restraining Order and Order to Show Cause was duly issued in each of said four remaining cases containing the title of the Court and cause in the particular case in which it was issued. Each of said Orders was signed by a Judge of said Court, and was duly served on the defendant therein named, and was issued and made returnable on the dates following, to-wit: [66]

In the Ventura Case, the Order was issued June 18, 1941, and made returnable June 23, 1941;

In the Whittier Case, the Order was issued on the 28th day of June, 1941, and made returnable July 7th, 1941;

In the Index Case, the Order was issued on July 3rd, 1941, and made returnable July 12th, 1941; and

In the Chula Vista Case, the Order was issued on July 8th, 1941, and made returnable July 14th, 1941.

Each of said Orders, except as above indicated, was the same in form and substance as the Temporary Restraining Order and Order to Show Cause in the La Verne Case, hereinbefore set forth in full.

ANSWERS IN SAID FOUR REMAINING
CASES.

Within the time allowed by law each respective defendant in said four remaining cases served and filed its verified answer. Each of said answers contains the title of said Court and cause in which the same was filed, and is the same in form and substance and raises the same issues as the answer of defendant LaVerne Co-Operative Citrus Association, a corporation, in the LaVerne Case, hereinbefore set forth in full, except that the allegations of said respective answers concerning the weekly regulation periods, the percentages of pro-rate bases, the fixed weekly allotments and the quantities of lemons shipped by each respective defendant are directed to and apply to the particular defendant filing said answer, and differ in that respect from said answer in said La Verne Case.

And except also, that Paragraph I. of the separate and further defense in each of said four answers contains not only the [67] language found in Paragraph I. of the separate and further defense in said answer in the La Verne Case, but also the following additional language:

“Due to variation in types and varieties of lemons, and in producing conditions peculiar to different producing areas within these states, heavy picks occur in certain areas at times different from heavy picks in other areas; and the type, variety and condition of lemons in some areas frequently require a different time or method of handling, shipping and marketing than in other producing areas.”

And except also, that each of said four answers, in the separate and further defense therein set forth, contains an additional paragraph not found in said separate and further defense in said answer in the La Verne Case, which additional paragraph reads as follows:

“Said Order as applied and administered by said committee, and by the Secretary on the recommendation of said committee, is arbitrary, unreasonable, unjust and discriminatory as against defendant; in that, as defendant is informed and believes and on that ground avers, competitors of defendant have been given excessive advance credits for lemons marketed in other than fresh fruit channels, advance credits for unmerchantable lemons, and excessive prorate bases, with the result that some of such competitors have received larger allotments than they are entitled to under said Order, and that defendant has received correspondingly smaller allotments than it is entitled to; also because certain handlers have been, and are being, permitted to ship without being required to limit their shipments.” [68]

VENTURA CASE.

[Title Court and Cause in the Ventura Case.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact and conclusions of law in this case are in the same form, are numbered the same as, and are identical with the correspondingly num-

bered findings of fact and conclusions of law in the La Verne Case, hereinbefore set forth, except as follows:

FINDINGS OF FACT.

I.

This action is brought by the United States of America against the defendant, Ventura County Orange and Lemon Association, a California corporation, with its principal place of business at Montalvo, California.

X.

The defendant, Ventura County Orange and Lemon Association, on or about May 8, 1941, made and filed with the said Committee its written application for a pro rate base and for allotments.

XI.

On May 31, 1941, upon the recommendation of said Lemon Administrative Committee and upon other available information, the Secretary of Agriculture fixed and determined the pro rate bases for all handlers of lemons who applied for a pro rate base and allotment, including the defendant, and established a weekly regulation period for the handling and shipping of lemons, commencing June 1, 1941 and ending June 8, 1941, and fixed the quantity of lemons which could be handled and shipped from California and Arizona in interstate commerce and foreign commerce with Canada, for said weekly period, at 650 car- [69] loads of lemons; and fixed the allotment for the defendant

at 3251 packed boxes of lemons with an overshipment privilege to defendant of 406 packed boxes; and established a weekly regulation period for the handling and shipping of lemons, commencing June 8, 1941 and ending June 15, 1941, and fixed the quantity of lemons which could be handled and shipped from California and Arizona in interstate commerce and foreign commerce with Canada, for said weekly period, at 575 carloads of lemons; and fixed the allotment for the defendant at 287 packed boxes with an overshipment privilege of 406 packed boxes of lemons.

The defendant during said weekly period beginning June 1, 1941 and ending June 8, 1941, shipped 3392 packed boxes of lemons grown in California, in interstate commerce; and during said weekly period beginning June 8, 1941 and ending June 15, 1941, shipped 6293 packed boxes of lemons grown in California, in interstate commerce.

[Endorsed]: Filed April 29, 1942. [70]

WHITTIER CASE.

[Title Court and Cause in the Whittier Case.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact and conclusions of law in this case are in the same form, are numbered the same as, and are identical with the correspondingly numbered findings of fact and conclusions of law in the

La Verne Case, hereinbefore set forth, except as follows:

FINDINGS OF FACT.

I.

This action is brought by the United States of America against the defendant Whittier Mutual Orange & Lemon Association, a California corporation, with its principal place of business at Whittier, California.

X.

The defendant, on or about May 1, 1941, made and filed with the said Committee its written application for a pro rate base and for an allotment.

XI.

On May 31, 1941, upon the recommendation of said Lemon Administrative Committee and upon other available information, the Secretary of Agriculture fixed and determined the pro rate bases for all handlers of lemons who applied for a pro rate base and allotment, including the defendant herein, and established a weekly regulation period for the handling and shipping of lemons, commencing June 15, 1941, and ending June 22, 1941, and fixed the quantity of lemons which could be handled and shipped from California and Arizona in interstate commerce and foreign commerce with Canada for said weekly [71] period, at 550 carloads of lemons; and fixed the allotment for the defendant at 389 packed boxes of lemons; with an overshipment privilege to defendant of 406 packed boxes;

The defendant during said weekly period beginning June 15, 1941 and ending June 22, 1941, shipped 1408 packed boxes of lemons grown in California, in interstate commerce;

[Endorsed]: Filed April 29, 1942. [72]

INDEX CASE.

[Title Court and Cause in the Index Case.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The findings of fact and conclusions of law in this case are in the same form, are numbered the same as, and are identical with the correspondingly numbered findings of fact and conclusions of law in the La Verne Case, hereinbefore set forth, except as follows:

FINDINGS OF FACT.

I.

This action is brought by the United States of America against the defendant Index Mutual Association, a California corporation, with its principal place of business at La Habra, California.

X.

The defendant, on or about April 30, 1941, made and filed with the said Committee its written application for a pro rate base and for an allotment.

XI.

On May 31, 1941, upon the recommendation of said Lemon Administrative Committee and upon other available information, the Secretary of Agriculture fixed and determined the pro rate bases for all handlers of lemons who applied for a pro rate base and allotment, including the defendant herein, and established a weekly regulation period for the handing and shipping of lemons, commencing June 22, 1941 and ending June 29, 1941, and fixed the quantity of lemons which could be handled and shipped from California and Arizona in interstate commerce and foreign commerce with Canada, for said weekly period, at [73] 700 carloads of lemons; and fixed the allotment for the defendant at 713 packed boxes of lemons;

The defendant during said weekly period beginning June 22, 1941, and ending June 29, 1941, shipped 2436 packed boxes of lemons grown in California, in interstate commerce;

[Endorsed]: Filed April 29, 1942. [74]

CHULA VISTA CASE.

[Title Court and Cause in the Chula Vista Case.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The findings of fact and conclusions of law in this case are in the same form, are numbered the same as, and are identical with the correspondingly

numbered findings of fact and conclusions of law in the La Verne Case, hereinbefore set forth, except as follows:

FINDINGS OF FACT.

I.

This action is brought by the United States of America against the defendant Chula Vista Mutual Lemon Association, a California corporation, with its principal place of business at Chula Vista, California.

X.

The defendant, on or about May 3, 1941, made and filed with the said Committee its written application for a pro rate base and for an allotment.

XI.

On May 31, 1941, upon the recommendation of said Lemon Administrative Committee and upon other available information, the Secretary of Agriculture fixed and determined the pro rate bases for all handlers of lemons who applied for a pro rate base and allotment, including the defendant herein, and established a weekly regulation period for the handling and shipping of lemons, commencing June 1, 1941 and ending June 8, 1941, and fixed the quantity of lemons which could be handled and shipped from California and Arizona in interstate commerce and foreign commerce with Canada, for said weekly [75] period, at 650 carloads of lemons; and fixed the allotment for the

defendant at 2673 packed boxes of lemons; with an overshipment privilege to defendant of 406 packed boxes;

The defendant during said weekly period beginning June 1, 1941, and ending June 8, 1941, shipped 7086 packed boxes of lemons grown in California, in interstate commerce;

[Endorsed]: Filed April 29, 1942. [76]

VENTURA CASE.

In the District Court of the United States in and for the Southern District of California, Central Division

No. 1597-BH Civil

UNITED STATES OF AMERICA,

Plaintiff,

v.

VENTURA COUNTY ORANGE AND LEMON
ASSOCIATION, a corporation,

Defendant.

DECREE FOR PERMANENT INJUNCTION

The above entitled cause having been consolidated by order of the court and the restraining order herein having been continued until the hearing of the application for a preliminary injunction and filed in this action, all having come on regu-

larly for hearing on the 31st day of October, 1941, and the 2nd day of April, 1942, upon the verified complaint, answer, stipulations, and affidavits filed in support of, and in opposition to, the application for preliminary injunction, and the court having heard arguments of counsel, and on the 29 day of April, 1942, having made and filed its written findings of fact and conclusions of law, and it appearing to the court that:

(a) The complaint herein seeks to enforce and prevent violations of Public No. 10, 73rd [77] Congress (May 12, 1933) as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and of that order issued by the Secretary of Agriculture of the United States, after hearings held upon due notice and by virtue of the terms of said act and rules and regulations appertaining to such matters entitled "Order Regulating the Handling of Lemons Grown in the States of California and Arizona", which said order became effective on the 10th day of April, 1941, and has been ever since said date and is now in full force and effect and operation.

(b) The defendant has violated said order of the secretary in that it has shipped lemons grown in the state of California into interstate commerce in excess of the allotments fixed for it by the Secretary of Agriculture pursuant to said order.

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that the said defendant, its officers, agents, employees, attorneys, and assigns, and each of them, and all persons acting on behalf of said defendant or claiming to act on behalf thereof, or any person in active concert or participation with said defendant, be restrained and enjoined from handling or shipping lemons grown in the states of California and Arizona in interstate commerce or to any place in the Dominion of Canada, in violation of, or contrary to, the terms and provisions of the "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order was issued by the Secretary of Agriculture on the 5th day of April, 1941, until further order of this court or until such time [78] as an order or judgment may be entered in the United States District Court for the Southern District of California, Central Division, in which this defendant has brought an action for a review of the secretary's denial of its petition filed pursuant to Subsection 15 of Section 608c, Title 7, U.S.C.A., which shall determine that said Order No. 53 is invalid or inapplicable to the plaintiff therein.

It Is Further Ordered that plaintiff have costs herein.

Dated: Los Angeles, California, this 29 day of April, 1942.

BEN HARRISON

United States District Judge

The above and foregoing judgment was filed with the Clerk of said Court, and duly entered and docketed on the 29th day of April, 1942.

[Endorsed]: Filed and Entered April 29, 1942.

[79]

WHITTIER CASE.

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 1620-BH Civil

UNITED STATES OF AMERICA,

Plaintiff,

v.

WHITTIER MUTUAL ORANGE & LEMON
ASSOCIATION, a corporation,

Defendant.

DECREE FOR PERMANENT INJUNCTION

The above entitled cause having been consolidated by order of the court and the restraining order herein having been continued until the hearing of the application for a preliminary injunction and filed in this action, all having come on regu-

larly for hearing on the 31st day of October, 1941, and the 2nd day of April, 1942, upon the verified complaint, answer, stipulations, and affidavits filed in support of, and in opposition to, the application for preliminary injunction, and the court having heard arguments of counsel, and on the 29 day of April, 1942, having made and filed its written findings of fact and conclusions of law, and it appearing to the court that:

(a) The complaint herein seeks to enforce and prevent violations of Public No. 10, 73rd [80] Congress (May 12, 1933) as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and of that order issued by the Secretary of Agriculture of the United States, after hearings held upon due notice and by virtue of the terms of said act and rules and regulations appertaining to such matters entitled "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order became effective on the 10th day of April, 1941, and has been ever since said date and is now in full force and effect and operation.

(b) The defendant has violated said order of the secretary in that it has shipped lemons grown in the state of California into interstate commerce in excess of the allotments fixed for it by the Secretary of Agriculture pursuant to said order.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the said defendant, its officers, agents, employees, attorneys, and assigns, and each of them, and all persons acting on behalf of said defendant or claiming to act on behalf thereof, or any person in active concert or participation with said defendant, be restrained and enjoined from handling or shipping lemons grown in the states of California and Arizona in interstate commerce or to any place in the Dominion of Canada, in violation of, or contrary to, the terms and provisions of the "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order was issued by the Secretary of Agriculture on the 5th day of April, 1941, until further order of this court or until such time as [81] an order or judgment may be entered in the United States District Court for the Southern District of California, Central Division, in which this defendant has brought an action for a review of the secretary's denial of its petition filed pursuant to Subsection 15 of Section 608c, Title 7, U.S.C.A., which shall determine that said Order No. 53 is invalid or inapplicable to the plaintiff therein.

It Is Further Ordered that plaintiff have costs herein.

Dated: Los Angeles, California, this 29 day of April, 1942.

BEN HARRISON

United States District Judge

The above and foregoing judgment was filed with the Clerk of said Court, and duly entered and docketed on the 29th day of April, 1942.

[Endorsed]: Filed and Entered April 29, 1942.

[82]

INDEX CASE.

In the District Court of the United States in and for the Southern District of California, Central Division.

No. 1635-BH Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

INDEX MUTUAL ASSOCIATION,

a corporation,

Defendant.

DECREE FOR PERMANENT INJUNCTION.

The above entitled cause having been consolidated by order of the court and the restraining order herein having been continued until the hearing of the application for a preliminary injunction and all filed in this action, all having come on

regularly for hearing on the 31st day of October, 1941, and the 2nd day of April, 1942, upon the verified complaint, answer, stipulations, and affidavits filed in support of, and in opposition to, the application for preliminary injunction, and the court having heard arguments of counsel, and on the 29 day of April, 1942, having made and filed its written findings of fact and conclusions of law, and it appearing to the court that:

(a) The complaint herein seeks to enforce and prevent violations of Public No. 10, 73rd [83] Congress (May 12, 1933) as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and of that order issued by the Secretary of Agriculture of the United States, after hearings held upon due notice and by virtue of the terms of said act and rules and regulations appertaining to such matters entitled "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order became effective on the 10th day of April, 1941, and has been ever since said date and is now in full force and effect and operation.

(b) The defendant has violated said order of the secretary in that it has shipped lemons grown in the state of California into interstate commerce in excess of the allotments fixed for it by the Secretary of Agriculture pursuant to said order.

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that the said defendants, its officers, agents, employees, attorneys, and assigns, and each of them, and all persons acting on behalf of said defendant or claiming to act on behalf thereof, or any person in active concert or participation with said defendant, be restrained and enjoined from handling or shipping lemons grown in the states of California and Arizona in interstate commerce or to any place in the Dominion of Canada, in violation of, or contrary to, the terms and provisions of the "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order was issued by the Secretary of Agriculture on the 5th day of April, 1941, until further order of this court or until such [84] time as an order or judgment may be entered in the United States District Court for the Southern District of California, Central Division, in which this defendant has brought an action for a review of the secretary's denial of its petition filed pursuant to Subsection 15 of Section 608c, Title 7, U.S.C.A., which shall determine that said Order No. 53 is invalid or inapplicable to the plaintiff therein.

It Is Further Ordered that plaintiff have costs herein.

Dated: Los Angeles, California, this 29 day of April, 1942.

BEN HARRISON

United States District Judge.

The above and foregoing judgment was filed with the Clerk of said Court, and duly entered and docketed on the 29th day of April, 1942.

[Endorsed]: Filed and Entered Apr. 29, 1942.

[85]

CHULA VISTA CASE.

In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 110-SD (BH) Civil

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHULA VISTA MUTUAL LEMON ASSOCIATION, a corporation organized and existing under the laws of California,

Defendant.

DECREE FOR PERMANENT INJUNCTION

The above entitled cause having been consolidated by order of the court and the restraining order

herein having been continued until the hearing of the application for a preliminary injunction and filed in this action, all having come on regularly for hearing on the 31st day of October, 1941, and the 2nd day of April, 1942, upon the verified complaint, answer, stipulations, and affidavits filed in support of, and in opposition to, the application for a preliminary injunction, and the court having heard arguments of counsel, and on the 29 day of April, 1942, having made and filed its written findings of fact and conclusions of law, and it appearing to the court that:

(a) The complaint herein seeks to enforce and prevent violations of Public No. 10, 73rd [86] Congress (May 12, 1933) as amended and re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, and of that order issued by the Secretary of Agriculture of the United States, after hearings held upon due notice and by virtue of the terms of said act and rules and regulations appertaining to such matters entitled "Order Regulating the Handling of Lemons Grown in the States of California and Arizona", which said order became effective on the 10th day of April, 1941, and has been ever since said date and is now in full force and effect and operation.

(b) The defendant has violated said order

of the secretary in that it has shipped lemons grown in the state of California into interstate commerce in excess of the allotments fixed for it by the Secretary of Agriculture pursuant to said order.

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed that the said defendant, its officers, agents, employees, attorneys, and assigns, and each of them, and all persons acting on behalf of said defendant or claiming to act on behalf thereof, or any person in active concert or participation with said defendant, be restrained and enjoined from handling or shipping lemons grown in the states of California and Arizona in interstate commerce or to any place in the Dominion of Canada, in violation of, or contrary to, the terms and provisions of the "Order Regulating the Handling of Lemons Grown in the States of California and Arizona," which said order was issued by the Secretary of Agriculture on the 5th day of April, 1941, until further order of this court or until such time as an order or [87] judgment may be entered in the United States District Court for the Southern District of California, Central Division, in which this defendant has brought an action for a review of the secretary's denial of its petition filed pursuant to Subsection 15 of Section 608c, Title 7, U.S.C.A., which shall determine that said Order No. 53 is invalid or inapplicable to the plaintiff therein.

It Is Further Ordered that plaintiff have costs herein.

Dated: Los Angeles, California, this 29 day of April, 1942.

BEN HARRISON,
United States District Judge.

The above and foregoing judgment was filed with the Clerk of said Court, and duly entered and docketed on the 29th day of April, 1942.

[Endorsed]: Filed and entered April 29, 1942.
[88]

[Title of Court and Cause in the Ten Consolidated Causes.]

THE RECORD OF THE CAUSES AS
CONSOLIDATED

STIPULATION AND ORDER CONSOLIDAT-
ING TEN CAUSES.

It is hereby stipulated and agreed that the above entitled actions will involve substantially common questions of law and of fact and that said actions may be consolidated.

It is further stipulated and agreed that this stipulation shall be without prejudice to any party or to the United States to move the court for an

order of severance of one or more of such consolidated actions.

Dated: September 4, 1941.

WM. FLEET PALMER,

United States Attorney,

JAMES L. CRAWFORD,

Assistant United States At-
torney, Attorneys for Plain-
tiff.

GUY RICHARDS CRUMP,

EMMET H. WILSON, JR.,

By GUY RICHARDS CRUMP,

Attorneys for Defendants

Index Mutual Association, a
corporation,

LaVerne Co-Operative Citrus
Association, a corporation,

Glendora Co-Operative Citrus
Association, a corporation,

Upland Orchards, Inc., a cor-
poration,

Ventura County Orange and
Lemon Association, a corpo-
ration,

Whittier Mutual Orange &
Lemon Association, a corpo-
ration,

Chula Vista Mutual Lemon
Association, a corporation,
etc.

G. V. WEIKERT,

Attorney for Defendants

Orange Belt Fruit Distributors, Inc., a corporation, etc.
Paramount Citrus Association, Inc., a corporation,
etc.,

Samuel Perricone, etc. [89]

PETER T. RICE,

Attorney for Defendants

Cahill-Battaglia, Inc., a corporation,
William P. Pann, etc.,

Irving Sarnoff, etc.,

A. M. Goodman.

It is ordered that the above entitled actions be, and they are, consolidated.

Dated: September 5, 1941.

HARRISON,

U. S. District Judge.

STIPULATION AND ORDERS CONTINUING
RESTRAINING ORDER AND APPLICATION
FOR PRELIMINARY INJUNCTION
TO TRIAL OF CAUSES.

The court, through and by its several orders made and entered to that effect in the La Verne Case, Ventura Case, Whittier Case, Index Case and the Chula Vista Case, which orders were based upon the stipulation of the parties, duly and regularly continued the return or hearing on the order to

show cause why a preliminary injunction should not issue in each of said five mentioned actions until the trial of said causes on the merits, and also continued in full force and effect the temporary restraining order theretofore issued in each of said actions until the time of such trial; also continued the application of plaintiff for a preliminary injunction until the time of such trial. [90]

DEFENDANTS' MOTION FOR DISCOVERY
AND PRODUCTION OF DOCUMENTS
UNDER RULE 34 F.R.C.P.

Defendants served and filed their notice of motion directed to the plaintiff, United States of America, and its attorneys, and reading as follows, to-wit:

[Title Court and Cause in the Ten Consolidated Cases.]

You and Each of You Will Please Take Notice that defendants LaVerne Co-Operative Citrus Association, Glendora Co-Operative Citrus Association, Upland Orchards, Inc., Ventura County Orange & Lemon Association, Orange Belt Fruit Distributors, Inc., Whittier Mutual Orange & Lemon Association, Index Mutual Association, and Chula Vista Mutual Lemon Association will move the above entitled court, before Honorable Ben Harrison, in the court room of said Judge in the Federal Building, in the City of Los Angeles,

on the 15th day of December, 1941, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, for an order under Rule 34 of the Rules of Civil Procedure, directing the plaintiff herein to produce and permit the inspection and copying or photographing by or on behalf of the moving defendants of the hereinafter designated documents and papers, which are not privileged and which constitute or contain evidence material to matters involved in the above mentioned consolidated actions and which are in the possession or under the custody or control of plaintiff.

Said motion will be made upon the records and files in said consolidated actions and upon the affidavit of Guy Richards Crump and points and authorities in support hereof, which are served and filed concurrently herewith. [91]

The documents and papers the inspection, copying or photographing of which is hereby requested, are the following:

1. All certificates of allotment and other documents or papers issued by the Lemon Administrative Committee to handlers of lemons in the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego, in the State of California, from and after the effective date of Order No. 53, referred to in said affidavit of Guy Richards Crump, to the date of inspection, showing or including advance credit counts.

2. All field notes and reports of field men

and agents of said Lemon Administrative Committee made to it, and all documents, records and papers showing actions of said Committee, its officers, employes and agents, giving or purporting to give advance counts pursuant to Section 953.4 (d) (4), including all reports and computations made to said Committee by its officers, employes and agents, showing the estimated storage life of lemons.

All of the documents and papers referred to in this paragraph 2 have reference to all handlers in the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego, to whom advance credit counts have been given by said Committee.

3. All computations of quantities of lemons made by said Lemon Administrative Committee, its agents or employes, pursuant to section 953.4 (d) (5) of said Order and all certificates of allotment or other documents or papers issued to handlers by said Committee showing or including such computations or the result thereof. The foregoing has reference to handlers in the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego. [92]

Attached hereto are points and authorities in support of said motion.

Dated: Los Angeles, California, December 8, 1941.

(Duly signed by the attorneys for these ap-

pealing defendants, and G. V. Weikert, as Attorney for defendant Orange Belt Fruit Distributors, Inc.)

With said notice, and in support of said motion, said defendants served and filed their memorandum of points and authorities and the affidavit of Guy Richards Crump, which said affidavit reads as follows, to-wit:

I am one of the attorneys for defendants LaVerne Co-Operative Citrus Association, Glendora Co-Operative Citrus Association, Upland Orchards, Inc., Ventura County Orange & Lemon Association, Whittier Mutual Orange & Lemon Association, Index Mutual Association and Chula Vista Mutual Lemon Association, and make this affidavit in behalf of said defendants and also in behalf of defendant Orange Belt Fruit Distributors, Inc., which is represented by G. V. Weikert, Esquire.

Plaintiff has in its possession or within its custody or control certain documents and papers which contain evidence material to issues involved in the above entitled actions, and which defendants represented by affiant and by said Weikert desire to inspect and to copy or photograph, pursuant to the provisions of Rule 34 of the Rules of Civil Procedure.

The consolidated actions are brought by the United States of America to enjoin alleged violations of an order regulating the handling of lemons grown in the states of California and Arizona, known and referred to in the pleadings as Order

No. 53, which order was issued by the Secretary of Agriculture of the United States purportedly pursuant to Section 8a (6) of Title I of the Act of [93] May 12, 1933 (48 Stat. 31 U.S.C. Title 7, section 608a (6), as amended August 24, 1934, 49 Stat. 672) and as reenacted and amended in the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (Public No. 137, 75th Congress) (said Act of May 12, 1933, as reenacted and amended being hereinafter referred to as "the Act").

Said Order provides, among other things, (section 953.4 (d) (4):

(The affidavit then quotes the language of said Section 953.4 (d) (4) of said Order No. 53, which is hereinbefore set out in full as a part of Exhibit "A", attached to the complaint in the LaVerne Case.)

The several complaints herein allege that the Secretary of Agriculture, pursuant to the provisions of section 953.4 of said Order, fixed and determined prorate bases for all handlers of lemons who applied for prorate bases and for allotments, including defendants and each of them, and established weekly regulation periods for the handling and shipping of lemons, commencing June 1, 1941; that the Secretary of Agriculture has fixed allotments for the various defendants pursuant to said Order and that said defendants have sold, handled and shipped lemons in the current of interstate commerce and foreign commerce with Canada in dis-

regard, defiance and violation of the applicable provisions of the order and of the regulations issued thereunder and in excess of the respective allotments fixed by said Secretary of Agriculture and allowed to defendants respectively.

The answers of the defendants represented by affiant and by said Weikert allege, among other things:

“Said Order as applied and administered by said committee (the Lemon Administrative Committee appointed pursuant to said Order) and the Secretary on the re- [94] commendation of said committee, is arbitrary, unreasonable, unjust and discriminatory as against the respective defendants in that, as defendants are informed and believe and on that ground aver, competitors of said defendants have been given excessive advance credits for lemons marketed in other than fresh fruit channels, advance credits for unmerchantable lemons, and excessive prorated bases, with the result that such competitors have received larger allotments than they were entitled to under said Order, and that defendants have received correspondingly smaller allotments than they were entitled to.”

From time to time requests have been made by handlers (other than defendants) advising said Lemon Administrative Committee that such handlers desired to market lemons in other than fresh fruit channels and requesting said Committee to compute the number of weeks that such lemons

could be held in storage, under commercial storage conditions, and, at the expiration of such period, would meet the requirements for marketing under applicable laws. Pursuant to such advices and requests said Committee has from time to time caused computations to be made of such lemons, and said Committee has included the lemons so counted as a part of the available lemons of such handlers for the number of weeks computed by said Committee.

As alleged in the answers of the defendants represented by affiant and said Weikert, said defendants have been informed and believe that the counts so given have been excessive insofar as competitors of said defendants are concerned, in that said Committee has given advance credits for unmerchantable lemons and excessive prorated bases based upon such excessive counts.

In order to defend against the allegations of the Government that the respective defendants have shipped excessive amounts of lemons in disregard, defiance and violation of the applicable provisions of the said Order and of the regulations issued thereunder, and in order to obtain the necessary evidence to prove the allegations of the respective answers of said defendants with respect to such advance counts, it is necessary that defendants be permitted to inspect the records in the possession of said Lemon Administrative Committee showing the advance counts given to competing handlers of lemons and the bases upon which such advance counts were made, particularly the amount of ad-

vance counts and the computations of the number of weeks that the lemons included in such advance counts could be held in storage under commercial storage conditions, together with the total weekly allotments given to such competing houses by the Secretary of Agriculture and on the recommendation of said Lemon Administrative Committee, and the percentage of the total approved quantity of lemons available for current shipment during each weekly period allotted to each of such competing houses. For the same reason it is necessary that said defendants be permitted to inspect and copy or photograph the documents and papers referred to in paragraph numbered 3 hereinbelow set forth.

Such evidence is relevant and material to the issues herein, and the documents and papers in which the same is contained are, and are hereby designated to be the following:

1. All certificates of allotment and other documents or papers issued by said Lemon Administrative Committee to handlers of lemons in the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego, in the State of California, from and after the effective date of said Order to the date of inspection, showing or including advance credit counts.

2. All field notes and reports of field men and agents of said Lemon Administrative Committee made to it, and all documents, records and papers showing actions of [96] said Committee, its officers, employes and agents, giving

or purporting to give advance counts pursuant to Section 953.4 (d) (4), including all reports and computations made to said Committee by its officers, employes and agents, showing the estimated storage life of lemons.

All of the documents and papers referred to in this paragraph 2 have reference to all handlers in the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego, to whom advance credit counts have been given by said Committee.

3. All computations of quantities of lemons made by said Lemon Administrative Committee, its agents or employes, pursuant to section 953.4 (d) (5) of said Order and all certificates of allotment or other documents or papers issued to handlers by said Committee showing or including such computations or the result thereof. The foregoing has reference to handlers in the Counties of Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Bernardino and San Diego.

GUY RICHARDS CRUMP

Subscribed and sworn to before me this 8th day of December, 1941

[Notarial Seal] HERTHA N. EBERT,
Notary Public in and for the County of Los Angeles, State of California.

The plaintiff, United States of America, resisted said motion by serving and filing its written "Points and Authorities in Opposition to Motion for Discovery and Production."

Said motion was presented and argued to the court on December 15, 1941, and submitted for decision. On December 18, 1941, said Court, by its Minute Order to that effect, denied said motion in its entirety. [97]

PRE-TRIAL PROCEEDINGS

The court, in its Minute Order, of date December 15, 1941, made and entered in the ten consolidated causes provided, among other things, as follows:

“It is further ordered that these consolidated causes are set down for pre-trial at 9:30 A.M. December 18, 1941.”

On December 18, 1941, a pre-trial conference or hearing was had before the court, Honorable Ben Harrison, Judge presiding, at which certain rulings were orally made by the court, but no reporter was present and no record was made of said rulings. The only record or evidence of said pre-trial proceedings, or the rulings made thereat, are the Minutes of said court of date December 18, 1941, (hereinafter set forth), and the references made to said pre-trial conferences and the rulings of the court at said conferences as the same appear hereafter in this agreed statement in the record of the proceedings at the trial of said consolidated cases.

Said Minutes of December 18, 1941, read as follows:

[Title Court and Causes in the Ten Consolidated Actions.]

The nine consolidated causes entitled above now coming on for pre-trial hearing; Walter M. Campbell, Assistant U. S. Attorney, appearing as counsel for the Government; Guy Richards Crump, Esq., appearing as counsel for the defendants in cases Nos. 110-Civil Southern Division, 1596-Civil, 1597-Civil, 1620-Civil, and 1635-Civil; G. V. Weikert, Esq., appearing as counsel for defendant in case No. 1598;

Attorney Campbell makes a statement to the Court relative to certain recent decisions.

The Court makes a statement relative to the motion of certain defendants filed December 8, 1941, under Rule 34 of the F. R. C. P., for production, inspection, and copying by defendants of the documents [98] and papers designated in said motion, which was heretofore on December 15, 1941, heard and submitted, and now orders said motion of defendants denied on the ground that the proposed evidence is immaterial herein. The Court makes a further statement as to the nature of these cases and of the issues.

Attorney Crump makes a statement that he is raising the constitutionality of the order of the Secretary of Agriculture and the orders of the committee thereunder.

Attorney Campbell makes a statement on behalf of the Government.

Attorney Crump makes a further statement and

refers to and reads from the Answer of the defendant Glendora Citrus Association in case No. 1596-BH Civil and states the position of the defendants respecting the question of the constitutionality of the orders as being violative of the Fifth Amendment to the Constitution of the United States, and makes a further statement of the matters contained in the Answer above referred to and with respect to which there is no stipulation by the Government, and which the defendants will seek to offer proof in support of.

The Court and counsel appearing discuss further the issues herein and the nature of the evidence to be offered herein.

The Court orders that counsel furnish to the Court by 3 P.M. today their points and citations of authorities which they desire to present for the consideration of the Court.

STIPULATION OF FACTS

All of the parties to said ten consolidated cases made and entered into their two stipulations of facts for use at and which were received in evidence at the trial of said consolidated cases. Said stipulations were in writing, and were and are in the words and figures following, to-wit: [99]

[Title Court and Said Consolidated Causes.]

STIPULATION OF FACTS

It Is Hereby Stipulated and agreed by and between the parties hereto, through their respective counsel, that:

I.

The commercial production of lemons in the United States is confined almost entirely to the State of California. In California there are about 6,000 growers growing lemons on more than 69,000 acres. In Arizona there are less than 500 acres planted in lemons. The average annual on tree farm value of California lemons for the five years ending with the 1939-40 marketing season amounted to \$16,000,000. The marketing season begins on November 1st of one year and ends on October 31st of the next year.

The shipment of lemons from California is primarily interstate in character. During five marketing seasons, ending with the 1938-39 marketing season, an average of 79% of the total annual production of lemons in California was shipped for commercial fresh consumption. Of this total, approximately 90% was shipped to markets outside the State of California. Lemons from California are shipped throughout the United States to Canada and other foreign countries. Practically the entire supply of lemons consumed in the United States is grown in and shipped from California; less than 1% from Arizona. Lemons are picked and shipped in every month of the year. The heaviest picks for California and Arizona as a whole generally occur in the months of February, March, April and May. Shipments are generally heaviest during the months of May, June, July and August.

II.

Lemons are a tree crop which require from 4 to 6 years to bring to production. Although trees produce the year around, there are different peaks of productivity. The fruit is usually picked [100] when it attains a marketable size, this being determined by the use of a ring, the size depending upon the picking policy of the particular producer involved, marketing conditions at the time and the condition of the fruit. When lemons are picked they are placed in picking (or field) boxes and hauled to a packing house or other shipping point. When they arrive at the packing house they are washed and sorted for color. At this time low grade lemons, referred to as "washer culls", are removed. At this time, also, the most efficient packing houses roughly classify the lemons by size so as to avoid the necessity later in packing operation of handling unwanted sizes in order to pack desired sizes.

After lemons not suitable for sale in the opinion of the producer or handler in fresh fruit form have been eliminated the remainder are generally, but not always, placed in storage, usually in basements which are often air-conditioned, and are there held until they are to be prepared for market. When that time comes they are removed from the storage rooms and placed upon grading belts where they are graded by handlers and sized largely by eye, after which they are packed in standard packing boxes for shipment. Fruit sold within the State of California is generally sold loose without packing. An

elimination again takes place during this final operation when any unmarketable fruit, or fruit which the handler does not wish to market, is set aside for by-products disposition.

III.

Peak picks of lemons are generally later in the season in the coastal areas of California than in the interior. The coastal areas include several Southern California Counties but the greatest acreage of coastal lemons is located in Ventura and Santa Barbara Counties in which there have been a greater percentage of recent plantings than in other counties. Lemons are classified with reference to maturity and color as dark green, light green, silver and tree ripe (yellow). In the interior sections of California a [101] considerable portion of the picks are of tree ripes, coming mostly at one time, whereas the coastal areas also have tree ripe lemons but do not have such proportionately heavy picks at one time and they are more uniformly of a dark green color. Green lemons keep in storage longer than silvers and silvers longer than tree ripes. Tree ripes will keep in sotrage from 10 days to 6 weeks; dark greens as long as 6 months. This difference in storage life is due not only to color at the time of picking but also to the uniform growth rate the fruit has had during the growth season. In the coastal areas there is less variation in climatic conditions and the fruit has a more uniform growth period than it does in the interior, which in the winter months are subject to greater cold and in

the summer time to a higher temperature and a more arid atmosphere. There is a marked difference in the proportion of tree ripe in different grove in the same district; the age of the trees, their physical condition and soil condition being controlling factors. The proportion of tree ripe in the same orchard varies markedly from year to year due to climatic conditions such as wind and variations in humidity and temperature. A dry wind will bring lemons to yellow, or tree ripe color, before their time and has a tendency to shorten their life expectancy.

IV.

Lemons are stored in loose boxes. They are shipped in packing boxes of standard sizes, the number of lemons in packed boxes varying according to their size. Four hundred six of such packed boxes constitute a standard railroad car shipment.

Lemons are known and referred to in trade as to size by the number of lemons which can be packed in a standard packing box, such as 300's, 360's, etc.

When lemons are being packed for shipment they are removed from the loose boxes and placed upon grading belts. All lemons placed upon such grading belts, which are considered suitable for shipment, are then packed. It is desirable to avoid returning any lemons to [102] storage because re-handling tends to injure the fruit, reduce its marketability and increase the cost of handling. In the process of packing lemons are segregated as to size and grade,

and when a sufficient number of various sizes and grades of marketable lemons are packed, they are placed in cars for shipment. Except in case of shipment by truck, lemons can only practically and economically be shipped in less than carload lots when shipped with other citrus fruits. It is a common practice in the industry to ship lemons in cars with oranges and grapefruit.

V.

Lemons shipped in Interstate Commerce are sold either at private sale f.o.b. packing house, or on a price arrival basis or at auction. There are 10 auction markets outside of and 1 in California. The defendant Cahill-Battaglia deals only in lemons and it is impractical for this particular dealer to ship lemons in less than carload lots or to pack lemons in contemplation of shipment in less than carload lots except where shipments are to be made by truck.

VI.

Defendants LaVerne Co-Operate Citrus Association, Glendora Co-Operative Citrus Association, Ventura County Orange and Lemon Association, Whittier Mutual Orange and Lemon Association, Index Mutual Association and Chula Vista Mutual Lemon Association market their lemons through Mutual Orange Distributors, which is a co-operative marketing corporation organized under the laws of California. Mutual Orange Distributors (hereinafter referred to as "M.O.D.") has been marketing lemons and other citrus fruits for its member asso-

ciations for many years, including said defendants. M.O.D. markets for about 700 lemon orchards. Its shipments of lemons in Interstate Commerce average approximately 1,000 cars a year, included in which are the lemons shipped on behalf of the above named defendants. Approximately 75% of the lemons handled by M.O.D. and its member houses, including the defendants above named, are sold and [103] shipped for consumption in states other than California and Arizona. It maintains agents in every carload market in the United States and Canada. While it has some salaried agents, it operates chiefly through brokers. Sales are negotiated by such agents and brokers, contracts of purchase and sale being signed in the states of delivery and shipments made from California. Practically all such sales are made subject to determination of price at the market quotations at the time and place of delivery to the purchaser. M.O.D. sales for its member houses, including defendants above named and the member houses, shipped about 50% of the lemons sold by M.O.D. direct to one buyer which maintains its own retail outlets and which plans its orders for normal requirements weeks and sometimes months in advance. This one large buyer also buys large quantities of lemons from other shippers. Practically all of its purchases from M.O.D. and others are on the basis of price on arrival.

VII.

Following the purported effective date of said Order, an Administrative Committee, as provided

for therein, was appointed by the Secretary, which committee thereafter recommended to the Secretary volume regulation of shipments as provided in said Order. Thereupon the Secretary, pursuant to recommendations of said Committee, fixed the total quantity of lemons which might be handled in the current of interstate commerce for the weekly period beginning 12:01 A.M. June 1, 1941, to 12:01 A.M. June 8, 1941, at 263,900 packed boxes, and the allotment of defendant Glendora Co-Operative Citrus Association at 288 packed boxes, computed on a prorate base of .109% of such total quantity; and the allotment of defendant Chula Vista Mutual Lemon Association at 2673 packed boxes computed on a prorate base of 1.013% of such total quantity; and the allotment of defendant Ventura County Orange and Lemon Association at 3251 packed boxes computed on a prorate base of 1.232% of such total quantity; and the allotment of LaVerne Co-Operative Citrus Association at 3557 packed [104] boxes computed on a prorate base of 1.348% of such total quantity; and the allotment of defendant Upland Orchards, Inc. at 124 packed boxes computed on a prorate base of .047% of such total quantity.

Similarly for the week beginning 12:01 A.M. June 8, 1941, to 12:01 A.M. June 15, 1941, the Secretary fixed the total quantity at 233,450 packed boxes; and the allotment of said defendant Ventura County Orange and Lemon Association at 2876 packed boxes computed on a prorate base of 1.232% of such total quantity which allotment was subsequently adjusted to minus 406 packed boxes for

alleged over-shipments; and the allotment of defendant Orange Belt Fruit Distributors, Inc. at 971 packed boxes of lemons computed on a prorate base of .416% of such total quantity.

Similarly for the week beginning 12:01 A.M. June 15, 1941, to 12:01 A.M. June 22, 1941, the Secretary fixed the total quantity at 233,300 packed boxes, and the allotment of defendant Whittier Mutual Orange and Lemon Association at 389 packed boxes computed on a prorate base of .174 of such total quantity, which was subsequently adjusted to minus 406 packed boxes for alleged over-shipments.

Similarly for the week beginning 12:01 A.M. June 22, 1941, to 12:01 A.M. June 29, 1941, the Secretary fixed the total quantity at 233,450 packed boxes, or 575 cars (on the basis of 406 packed boxes to the car), and the allotment of defendant Index Mutual Association at 713 packed boxes computed on a prorate base of .251 of such total quantity which was subsequently adjusted to minus 51 packed boxes for alleged over-shipments, so that the largest amount of lemons which said defendant Index Mutual Association could ship under the order in the current of Interstate or Foreign Commerce with Canada during said weekly period was 662 packed boxes.

Similarly for the week beginning 12:01 A.M. January 18, 1942, to 12:01 A.M. January 25, 1942, the Secretary fixed the total quantity at 275 car-loads but the Secretary did not fix an allotment for the defendant Western Fruit Growers, Inc., due

to the fact that the said [105] defendant failed to file its application for a prorated base and for allotments prior to the date on which the computation for the above weekly allotment was in order under the applicable provisions of the Order.

VIII.

Not more than approximately 10% of the lemons sold in fresh fruit form throughout the United States and Canada can be sold in the States of California and Arizona. To accommodate their business, both interstate and intrastate, defendants have developed facilities for the packing and shipment of lemons, including packing houses, storage and other facilities, in which large sums of money have been invested. Exception as to the storage capacity of the defendants should be noted in the cases of the defendants as follows: Cahill-Battaglia, Inc. and William P. Pann combined have storage capacity for 1,000 boxes of lemons or approximately two cars. Irving Sarnoff and Abraham Paul have no storage facilities for the storage of lemons.

IX.

If tree ripe and silver lemons are to be shipped before they become unmarketable through decay, they must be shipped sooner after picking than do dark or green lemons.

X.

It is stipulated that Orange Belt Fruit Distributors, Inc., in making its application to the Committee for computation of the lemons available for

current shipment, in compliance with the rules purportedly adopted by such Committee and the Order, did so under protest.

It Is Further Stipulated that all applications and other documents and papers filed by all defendants with the Committee were filed under protest and with express reservation of any rights of said defendants.

The foregoing is subject to all exceptions and objections as to relevency, immateriality and competency, as to the whole or any [106] part thereof.

WM. FLEET PALMER,

United States Attorney

WALTER M. CAMPBELL,

Assistant U. S. Attorney,

WM. W. WORTHINGTON,

Assistant U. S. Attorney.

By WM. M. WORTHINGTON

Attorneys for Plaintiff

GUY RICHARDS CRUMP,

Attorney for Glendora Co-
Operative Citrus Association and LaVerne Co-Op-
erative Citrus Association
et al.

PETER T. RICE

Attorney for Cahill-Battaglia,
Inc. and William P. Pann

G. V. WEIKERT,

Attorney for Orange Belt
Fruit Distributors, et al.

[Title Court and Said Consolidating Cases.]

STIPULATION OF FACTS.

The California Fruit Growers Exchange handles approximately 90% of the total lemons produced in California and Arizona. It sells a large part of the lemons marketed by it through the auctions. The California Fruit Growers Exchange (hereinafter for convenience referred to as "The Exchange") purports to be a co-operative marketing corporation, marketing for more than 4,000 lemon growers. These growers turn in their fruit to various packing houses, of which they are members, and which prepare it for shipment and ship it. Over 60 packing houses handling lemons are affiliated with the Exchange. These houses are grouped into 25 district exchanges. The Exchange is made up of these district exchanges, with one director from each on the central board. Each district exchange in turn is made up of a group [107] of local associations or packing houses with one director from each local association elected by its board. The directors of each local association are elected by its grower members. The local associations having packing houses

affiliated with The Exchange, including both commercial corporations for profit and co-operative corporations.

Dated; this 30 day of March, 1942.

WM. FLEET PALMER,
United States Attorney,
WALTER M. CAMPBELL,
Assistant U. S. Attorney,
WM. M. WORTHINGTON,
Assistant U. S. Attorney.
Attorneys for Plaintiff.

GUY RICHARDS CRUMP,
Attorney for Certain Defen-
dants.

PETER T. RICE
Attorney for Cahill-Battaglia,
Inc.

G. V. WEIKERT,
Attorney for Orange Belt
Fruit Distributors, Inc.

[Endorsed]: Filed March 31, 1942. [108]

PROCEEDINGS AT THE TRIAL.

The trial of the ten consolidated cases started March 31, 1942, before the Honorable Ben Harrison, Judge presiding, whereupon the following proceedings occurred.

At the suggestion of the court, the file in the La Verne Case was referred to and used as a typical example of all the cases on trial. In response to the court's question, Mr. Worthington, Assistant United States Attorney, stated that the complaints in all of the cases were in the same form, except that the numbering of the paragraphs in the La Verne complaint was different from the other complaints.

"The Court: And the special defenses are the same in all cases.

Mr. Crump: The evidence is different in some of the cases, particularly with regard to the Chula Vista case. There is additional evidence in connection with that, because of the large percentage of tree ripe small size lemons handled by that house, which goes to different markets than the large size lemons.

I might say, your Honor, that I have prepared my offers of proof on the understanding, which I gathered from your Honor's ruling on the pre-trial hearing that the actual taking of evidence would not be permitted. I haven't approached the subject solely from the standpoint of any one case; the evidence introduced in one will be largely applicable to others, and I assume it may be stipulated and ordered that the testimony introduced, insofar as one case is concerned, will apply to all, insofar as it is applicable.

The Court: Yes. At our pre-trial conference I ruled that the defendants be held to follow their administrative remedy and that in these actions the court would not receive evidence on the sufficiency of the evidence before the Secretary of Agriculture. As I understand, Judge Crump, under your theory it would be virtually a [109] trial de novo of the questions that were before the Secretary of Agriculture.

Mr. Crump: No, that is not my position. I understand that the cases hold that in the injunction proceedings the court will not go back of the order; that is, will not go into the testimony which was presented to the Secretary of Agriculture, and upon which the order in question, Order No. 53, was based. So we don't intend to go into the economic phase of the case, or any showing prior to the order. We do attack the constitutionality of the order under the fifth amendment, both as the order is written and as it necessarily operates on the grounds that it deprives the defendants whom I represent of their property without due process of law. And, also, we attack it on the ground that it is discriminatory and confiscatory. And the evidence which we wish to offer and which I will attempt to offer, subject to the rulings of the court, but without agreeing to the rulings of the court, goes to those points."

In response to the court's question, Mr. Crump stated for the record that each of the defendants represented by him (viz. all of the appealing defendants herein) had petitioned the Secretary of

Agriculture for a modification of Order No. 53, or exemption therefrom, under the provisions of section 608c (15) of the Act; that these petitions had been denied and petitioners denied any relief by the ruling of the Secretary, of date March 7, 1941; that a joint petition for the review of such ruling of the Secretary had been filed by all of said parties represented by Mr. Crump (viz. defendants, La Verne Co-Operative Citrus Association, a corporation; Glendora Co-Operative Citrus Association, a corporation; Upland Orchards, Inc., a corporation, Ventura County Orange and Lemon Association, a corporation; Whittier Mutual Orange & Lemon Association, a corporation; Index Mutual Association, a corporation; Chula Vista Mutual Lemon Association, a corporation, and also Mutual Orange Distributors, the [110] selling organization for said defendants) in the above entitled court on March 27, 1941, and that these review proceedings were now pending, but undecided, before Honorable Harry A. Hollzer, Judge of said court.

The court then started the consideration of the complaint in the LaVerne Case and proceeded as follows:

“The Court: The case of LaVerne. All of the allegations in the complaint down to paragraph 7. I believe, are admitted.

Mr. Crump: I think so.

The Court: And 7 is admitted, except the allegation “All interested persons, including defendant, were afforded full opportunity to be heard concerning the proposed order.” That is the only denial in that paragraph, isn’t it?

Mr. Crump: I think so.

The Court: Isn't that a matter that is before the Secretary on the petition for review?

Mr. Crump: I think so, but I didn't want to admit it. I couldn't very well admit it.

The Court: So it isn't a point that is involved in this action here.

Mr. Crump: I don't propose to offer any evidence in connection with it.

The Court: Paragraph 8. I have a question mark on that one. As I understand it, you do not deny that the Secretary made the order?

Mr. Crump: No.

The Court: What is the effect of your denial in Paragraph 8?

Mr. Crump: Well, the effect of it is to deny that the order was based on the evidence taken at the hearing, or that the Secretary found from the evidence on the hearing that the order should be made. In other words—— [111]

The Court: To preserve any right you had under the pending hearing?

Mr. Crump: That is right. That is the effect of it, is to protect the record.

The Court: Then, Paragraph 9. The only part of that which is denied is, "the parties signatory to which were handlers who handled more than eighty per cent. (80 per cent) of the volume of lemons covered by the order.

Mr. Crump: Yes.

The Court: What point is involved in that?

Mr. Crump: The point involved in that is that

the Government evidently thinks that is a deep dark secret, and they won't let us know who signed it; so we can't admit it.

Mr. Worthington: I think Judge Crump is going to admit, if the court please, that among others who signed the agreement was California Fruit Exchange.

Mr. Crump: I will admit that the California Fruit Exchange signed it, but I won't admit that any of the member houses signed it.

The Court: What is your position, as far as the recitals of the Secretary of Agriculture in his order? Do you think that is binding upon us, as far as this section is concerned?

Mr. Crump: I don't think we can go behind the order in this action.

The Court: All right."

It was then stipulated by all the parties that California Fruit Growers Exchange was one of the signers of the Marketing Agreement.

"The Court: Then, as far as Paragraph 10 is concerned, do I understand the only effect of the denial there is that, "and selected the members thereof in accordance with the provisions of said section of the Order, and the said committee is now and has at all times since the establishment thereof exercised the powers and performed the duties [112] given and required by the Order," which is more or less of a conclusion?

Mr. Crump: I think so.

The Court: How about Paragraph 11?

Mr. Worthington: That is admitted, I think, if your Honor please, as to all of the defendants except Cahill insofar as filing for the prorated allotment is concerned. Cahill didn't file for the prorated allotment at all."

"The Court: Your stipulation is that they filed under protest, is it not?

Mr. Crump: That is my understanding.

The Court: Paragraph 12 is another denial of a conclusion of law.

Mr. Crump: That is right.

The Court: Paragraph 13 is admitted. 14 is denied.

Mr. Worthington: Is the court referring simply to the defendants represented by Judge Crump?

The Court: I am thinking first of the case involving the LaVerne Co-Operative Association.

Mr. Worthington: Paragraph 14; is that the one?

The Court: Yes, 14.

Mr. Worthington: I think that is covered by the stipulation.

The Court: I know, but I want to know just what is the effect of your allegation.

Mr. Crump: I think it is largely a matter of conclusions of law. In other words, we admit in these answers over-shipments; that is, shipments beyond the allotments fixed by the Secretary and the Committee.

The Court: Yes.

Mr. Crump: We deny that those over-shipments were unlawful. [113]

Mr. Worthington: But, I take it, the defendant does not deny that the Secretary fixed allotments?

Mr. Crump: No.

The Court: But I understand they recognized—what is it, Order 53?

Mr. Worthington: Yes, sir.

Mr. Crump: Pardon?

The Court: You recognize the Order 53. And the only thing you are denying is the basis upon which the Order was made; that is, the legality of it?

Mr. Crump: Yes, we recognize that there is an Order No. 53.

The Court: Yes.

Mr. Crump: And we recognize that the acts of the Committee and the Secretary were in pursuance to the provisions of that Order.

The Court: Yes. Take Paragraph 16, for instance, which sets forth the number of boxes shipped in violation. That is denied. I understand it admits an over-shipment, but is there a dispute as to the figures involved?"

It was then stipulated by the Assistant U. S. Attorney, Mr. Worthington and Mr. Crump and accepted by the Court that, for the purposes of this hearing only, the amounts of lemons stated in the respective answers of the defendants represented by Mr. Crump as having been over-shipments in the weekly regulation periods set forth in the complaints were true and correct.

"The Court: Do I understand you gentlemen

that as to Paragraph 17 the stipulation covers the exact amount of allotment that was granted to the Glendora Co-Operative?

Mr. Crump: I think the stipulation covers the total amounts of shipments permitted, and the allotments for each one of the defendants for the period covered by the allegations of the complaint. That is right, isn't it, Mr. Worthington? [114]

Mr. Worthington: That is correct.

Mr. Crump: It does not cover the subsequent weeks, which we cover in our——

The Court: In your answer?

Mr. Crump: In our affirmative answer.

The Court: As I understand it, according to the stipulation it is stipulated that while you do not admit the right to make the allotments, that the allotments were made, and that there were shipments in excess of the allotments.

Mr. Crump: Yes. We admit, and I will stipulate that each one of the defendants whom I represent for one or more weeks shipped lemons in excess of the amount of their respective allotments. Does that cover it, your Honor?

The Court: I think so.

Mr. Crump: Yes.

The Court: Now, you also cover in your stipulation, commencing with Paragraphs 23 and 24—you also set forth long recitals of the general marketing of lemons. May I ask what materiality that has in this action? Aren't they matters that are presently before the Secretary of Agriculture?

Mr. Crump: Are you referring now to the allegations of the complaint?

The Court: Yes. For instance, 23 and 24.

Mr. Crump: Well, I didn't draw the complaint. I think Mr. Worthington can answer that.

The Court: Take 23. It is admitted as to certain parts and denied as to certain parts. Wherein is that a material allegation as to any of the issues in the complaint?

Mr. Worthington: May it please the Court, I don't think that it is material, especially at this time, in view of the rulings of the court in the pre-trial conference.

The Court: Well, of course, I may be wrong in some of my rulings. It won't be the first time. I am trying to get the [115] theory upon which you approach this subject.

Mr. Crump: Well, we consider it material from the standpoint of the defendants, but I don't know that it has any materiality from the standpoint of the Government's case. It is probably largely a matter of inducement.

The Court: It may be informative, but I am inclined to the position that the only material allegations of the complaint are that there has been an order made, for instance, this Order 53, and that there has been a committee appointed, that the committee has made certain allotments, and that the defendants have shipped in excess of those allotments, insofar as the Government's case is concerned. I am asking, gentlemen, frankly, for any light you can throw upon it.

Mr. Worthington: I agree with the court fully, as far as I am personally concerned, that it is surplusage. And that all that is necessary to protect ourselves—we might intend offering the transcripts before the Secretary, but I think we have very good authority that it isn't necessary. Certainly the Government wants to protect itself at all angles, and, of course, the complaint drawn in this form is one that has been used by the Government for some little time in this particular type of cases, because that had been heretofore presented to the lower courts, as fully as possible—the Government's reasoning, as well as its final action.

The Court: I know, but if this is a proper allegation in the complaint, before you can obtain injunctive relief then the court must try the very issues that were before the Secretary of Agriculture.

Mr. Worthington: I don't think it is necessary. I don't think it is part of the Plaintiff's case, at all, except as rebuttal later on, if the defendant puts in a defense along those lines. In other words, as I read the complaint it is somewhat setting out rebuttal instead of the plaintiff's cause of action.

Mr. Crump: I don't want to stipulate on being understood as agreeing that the Government need only prove the making of the [116] order, and the violation of the orders of the Committee and Secretary, with reference to the amount of shipments. And what I am saying is intended, rather, to be an expression of my views based upon what I under-

stand the Government's contention is, and what I understood was your Honor's ruling on the pre-trial conference. If I understand the Government's position correctly it is that it only has to show that the Order was made, and that it was violated. Is that your position, Mr. Worthington?

Mr. Worthington: That is my position, but I am also going to take advantage of making an offer of the transcript before the Secretary of Agriculture, to the court, in order to protect myself in the event we later decide that the dissenting judges in the Rowan Oil case didn't construe the meaning of that case correctly.

The Court: Well, you must understand this: If the court is wrong this case is going to be sent back for a re-trial, and if those are material facts in the case they will have to be threshed out.

Mr. Crump: I just want the record to show that while I have made certain statements here, in regard to certain allegations, that they are not an expression of my own view, but an expression of what I would consider to be the case if Mr. Worthington's position is correct.

The Court: Well, the court will pass on that question, as far as this case is concerned, and then, as I understand it, gentlemen, any evidence introduced here or offered in evidence, is binding upon all the parties to these ten actions, and that in addition thereto, Mr. Rice will offer additional evidence on points raised by him, which is different from the various cooperative associations that are [117] represented by Judge Crump and Mr. Weikert.

Mr. Rice: We have stipulated to those differences, your Honor, as affects the second handlers.

Mr. Crump: We will stipulate that all evidence introduced in any one of the consolidated cases may be considered as applying to all of the cases, insofar as it is applicable.

Mr. Rice: So stipulated.

Mr. Crump: And that the same will be true of any offers of proof which have been made.

Mr. Rice: So stipulated, counsel.

Mr. Weikert: So stipulated.

Mr. Worthington: So stipulated."

"The Court: Judge Crump, may I make an observation as to the case pending to review a decision of the Secretary of Agriculture? Will not that proceeding settle all the issues that are involved in this case?

Mr. Crump: We hope so.

The Court: The constitutionality questions and the sufficiency of the evidence before the Secretary of Agriculture, and your question that you were shut off on cross-examination, all those things will be determined in that proceeding.

Mr. Crump: We hope so, your Honor. But I don't want to fall to the ground between two stools. And to illustrate what I mean, and not to be considered, of course, as an offer of evidence at all: In the first hearing before the Secretary of Agriculture we were not permitted to cross examine witnesses. On the second hearing the Secretary took the position that we couldn't go back of the order to show that the order was not based on sufficient

evidence. Consequently, we lost out both ways. We lost out in the first hearing because we weren't permitted to cross examine and to show that the facts were not so, and we lost out on the second hearing because the court said we couldn't go back that far; we had to start in at the time of the [118] making of the orders.

Now, using that as an analogy, I don't want to be put in a position here of having a ruling in these cases, which we might acquiesce in, to the effect that all complaints are to be determined in a review hearing, and then get into the review hearing and have the court there say they should have been determined in the injunction hearing. So, as far as I am concerned, we are in this position: We have got to fight both these things through until one is finally decided, or that one be abated until the other one is decided.

The Court: Well, the thought I had in mind—and I am simply expressing my thoughts out loud so that you can understand what is in my mind—I am sure you must pursue your administrative remedy and that under the act here this court is primarily concerned with whether or not the Order No. 53 has been violated; that the question, in matters of review, should be relegated to the other actions, and unless something is shown to the contrary I am going to rule that way. On the other hand, I do not desire that there be any ruling or findings of fact in this case that will in any wise preclude a proper hearing on the matter of review. In other words, I am trying to confine the issues

down to a point so that your matters on review in this proceeding will in no wise be considered res adjudicata in any of the issues there involved.

Mr. Crump: Here is one thing that bothers me in that connection; I don't think the procedure has been entirely settled in these matters between reviewing the injunction cases or the extent of the review. As far as I can decide from the cases some courts have held, and probably the majority have held, that you are limited on your review to the testimony that was taken before the Secretary of Agriculture, except on constitutional questions. Some courts, however, seem to treat that review as a quasi trial de novo, in which evidence could be received rebutting evidence taken before the Secretary of Agriculture. And we are more or less feeling our way in that respect. If it should be ultimately held that in the review proceedings we are limited entirely to the evidence taken before the Secretary of Agriculture, including any constitutional points which we raise, then evidence showing the operation of the orders and its necessary effect, as operative, insofar as it is discriminatory or confiscatory, would not be before the court in the review hearing. Hence, the only place where it could be presented would be in the injunction hearing. Now, on the other hand, if it should ultimately be held that we have a right to go at least to the extent of putting in evidence in the review hearing to show that the anticipated injury to those whom we represent has become, in fact, an actual injury—of course, the testimony on the original

hearing before the Secretary had to be more or less opinion evidence as to what the effect of the order would be, because it wasn't then in effect, and it wasn't in evidence; whereas, now we know what the effect of it has been.

Now, query: In the review hearing will the court go into the question as to what the effect of the order actually has been, insofar as it may have deprived the handlers or any handlers of their property without due process of law? If it will not, and we have a right to raise the constitutionality question, and we can't raise it there, certainly we can raise it here, because we must be able to raise it one place or the other. So I don't see now any way out of it except either to proceed here as though there were no review, except as to matters previous to the making of the order itself, on the one hand, or else that this trial be continued indefinitely, or continued until after a decision in the review cases; and that the temporary injunction or temporary restraining order remain in effect in the meanwhile, which give the Government full protection, and protects us from any adverse findings which would necessitate an appeal. I can't see how the Government would suffer at all if that were done; [120] and perhaps that is the best thing to do, to let the review proceeding take its course, and let us stipulate, as we have from time to time prior to this trial that the temporary restraining order may remain in effect without prejudice; that is, I mean without any prejudice to us by reason of their

not moving to set it aside or by reason of any delay to which we consent.

I think that, perhaps, is the best answer to the whole problem.

The Court: Well, the court wants to dispose of these cases. They are injunctive proceedings, and I think the court should dispose of the issues in these cases. But at the same time, as I told you before, Judge Crump, I do not desire to make any rulings or findings of fact that would in any manner jeopardize a hearing that you have coming up in another court in this district.

Mr. Crump: Well, if your Honor adopts the procedure outlined in the pre-trial conference of not taking evidence, but permitting offers of proof, then I take it there would be no findings, except the findings on the portions of the complaint which are admitted, and which, in effect, amount to a finding, that the order was made, that the shipments were limited in certain amounts, that over-shipments were made contrary to the allotments; leaving all questions of legality of the making of the order, and any legal conclusions alleged in the complaint to the effect that the Secretary found on sufficient evidence, and so forth—which I don't think there is any question here—to be determined in the review actions.

The Court: That is the reason I have been asking some questions here. We are getting down to the gist of what the court has in mind. For instance, in reading this complaint I felt there were

a lot of allegations that were superfluous and represent more or less conclusions of law. For instance, that they did certain things and that it was according to law. That is a conclusion as far as the pleadings are concerned. [121]

Mr. Crump: I wouldn't like a finding that the Secretary found from the evidence before him certain things, because that would mean if we had to try that out here we would have to go into the evidence taken before him.

The Court: I think, insofar as this action is concerned, the finding should be that an order was made and that in pursuance to that order certain committees were appointed and certain allotments were made, and there were overshipments. For instance, this paragraph—I forget the number—making a recital of certain order regulating the handling in the lemon industry, that is a matter that the Secretary of Agriculture has passed on. If I am to pass on it in this action it opens a trial *de novo* on the issue.

Mr. Crump: Not at all. We have a right to put in evidence here and make our offers of proof on the basis of good faith, but, nevertheless, having in mind that the court has stated in the pre-trial conference that when the question arose it would not take evidence, and that we would be limited, as I understand, to show, if we could, that the order on its face was invalid, without helping that in any way by evidence extrinsic under the order; then merely discussing the procedure without waiving

any rights by so doing. It seems to me that the procedure outlined by your Honor would cover the situation, and still preserve our rights in the review, without finding against us on points which really have no place in this case, as I see it, under the theory adopted by the Government.

Mr. Worthington: May it please the court, in answering Judge Crump's argument, I submit that this court is a statutory court. It is not a constitutional court. Its right to decide constitutional questions are those given to it by Congress. Congress can subsequently limit, in specific instances, the right of this court to try constitutional questions. And I submit, in this particular one Congress has in fact placed a limitation on the district courts, where an action is brought by the Government for violation of [122] this particular statute, from going into that constitutional question. And the remedy in these cases is to proceed before the Secretary of Agriculture, and on denial they can go to the district court for review.

The Court: I don't see where you and Judge Crump are apart at all.

Mr. Crump: Well, we are apart on this proposition: That this court has no right to go into constitutional questions. I don't say that for a minute. I think that inherent and embraced in the act itself is a valid order, in order that injunction may issue. But I was talking about procedure. Assuming that the court adhered to the procedure as outlined on the——

The Court: Do I understand, Mr. Worthington, that this court has the right to go into the question as to whether the order of the Secretary is a proper order, unless it complies with an act of Congress?

Mr. Worthington: Using the term "this court" advisedly. That is, this court is sitting simply to hear and determine proceedings brought by the Government to restrain violation of the order; yes, sir.

The Court: I would like to have your authorities on that. As I understand, if there is an act of Congress in dispute, the court still can pass upon it, but the appeal is directly to the Supreme Court. In questions of constitutionality in the state law they call in two extra judges. But you mean to say that I must accept any order that the Secretary of Agriculture puts out, and say that notwithstanding if it is made in a conflict with the statute which provides for it on the face of it, I still have to accept it?

Mr. Worthington: We first——

The Court: I am asking that question.

Mr. Worthington: Yes, sir, your Honor, when the case before you is nothing else than a petition of the Government for a re- [123] straining order and a violation of that order.

The Court: Where is your authority?

Mr. Worthington: There is no authority for it.

The Court: Then, on what do you base that?

Mr. Worthington: On the authority that this court is a statutory court; that the court has no

right to try constitutional questions, except that Congress has given it that right. But it comes now with a special right in a particular instance. It has provided a separate tribunal, and that is before the Secretary of Agriculture, where the parties think they have been injured by the action of the Secretary, pursuant to an act of Congress, can proceed and their entire rights may be heard and determined before the Secretary of Agriculture. And if the Secretary of Agriculture goes against them they have a right to go into the district court and have all questions of law determined by the district court. The action that we are proceeding under is separate and distinct entirely. It simply provides protection to the Government. Otherwise, to grant Judge Crump's contention would be that the defendants could go ahead and violate the statute without paying any attention to it whatever, and when the Government attempted to stop them they could come in and plead the Government's action against them contrary to what the statute has provided. They wouldn't have to proceed at all. Congress has provided a definite method of procedure for them.

The Court: Well, you proceed with your case. What evidence have you to offer? Have you got any evidence to support it?

Mr. Worthington: Not as far as counsel's statement is concerned, but I would like to offer a transcript before the Secretary of Agriculture—

Mr. Crump: Will you pardon me a moment?

Mr. Worthington: Yes.

Mr. Crump: Just one word with respect to this argument of Mr. Worthington: Here again we are faced with this difficulty of [124] having adverse ruling, and according to Mr. Worthington the constitutional questions must be presented to the Secretary of Agriculture, which means that the Secretary, according to the Government's argument, is vested with the authority to determine whether his own acts are constitutional. That goes way beyond what the Secretary of Agriculture says himself, because in the hearing before the Secretary of Agriculture he ruled that all constitutional questions was for the court and not for the Secretary. Now, if the Secretary ruled that the court must do it, and the Government says that the Secretary must do it, and neither one of them does it, then we can't have any ruling on constitutional questions at all.

Mr. Worthington: I don't think the court got from my statement that the Secretary would pass on the constitutional questions.

The Court: Who would pass on it?

Mr. Worthington: The United States District Court would pass on it in the review proceedings. I am not for one moment suggesting that the Secretary of Agriculture rule on constitutional questions.

The Court: Go ahead and proceed with your case. As I understand, you are now offering the proceedings before the Secretary of Agriculture.

Mr. Worthington: One volume stamped on the

outside A-144 O-144, and one volume stamped L-C, 2-A and 2-B, being a certified transcript of a record of the proceedings under which the hearing was called to determine whether or not an order was to be issued, now before the court and known as Order No. 53, being a complete transcript of the hearing before the Secretary of Agriculture in that matter——

Mr. Crump: May I see that. This is, Mr. Worthington, just the proceedings on the promulgation hearing.

Mr. Worthing: ——containing statistical data on California and Arizona lemons, statistical information in the lemon industry, statistics pertaining to lemons—— [125]

The Court: You don't have to read all the contents of that. It is a transcript of record before the Secretary of Agriculture upon which you base Order No. 53 involved in this action. It may be marked. The court is going to try to be consistent in this matter, and simply mark it for identification. It feels it isn't part of the issues of this case.

Mr. Crump: In other words, the offer in evidence is denied.

The Court: Yes.

The Clerk: Exhibit 1.

(The documents referred to were marked "Government's Exhibit No. 1 for identification.")

Mr. Worthington: That is the Government's case, may it please the court.

The Court: Now, we will hear from you gentlemen. Do you want a recess?"

A short recess was then taken.

Mr. Crump: Now, as to the question of procedure, your Honor: I have witnesses here, and I could call them to the stand and ask preliminary questions which I assume would be admissible under the order, and then proceed to ask a question to which an objection, I assume, will be interposed and the court's ruling given; or we can have a stipulation it need not be necessary to call the witnesses to the stand, that I may proceed to make my offers of proof the same as though they had been called, objections interposed and objections sustained. Is that satisfactory?

Mr. Worthington: I think that is a matter entirely in the court's discretion.

The Court: It seems to me that inasmuch as the court at the pre-trial conference, of which there is no record at this time, as far as the files are concerned, held that the defendants would have to pursue their administrative remedy and that the court was not going to [126] receive evidence as set forth in the special defenses here, that an offer of proof should be sufficient without the necessity of calling the witnesses to the stand. However, the court is very much interested in these offers of proof, and if the court should, during the proceeding, determine that it desires to hear certain evidence, then I will so indicate to counsel, and such witnesses may be placed on the stand.

Mr. Crump: Very well. Is that satisfactory?

Mr. Worthington: Oh, yes.

Mr. Crump: Very well.

The Court: However, in making the offers of proof, Judge Crump, I wish you would state the purpose for which you make the offer, so that the court will be able to determine——

Mr. Crump: Well, each and all of the offers of proof which are made will be for the purpose of establishing the unconstitutionality of the order, both as written—that is, as it necessarily operates, and on its face.

The Court: That is, the workings of the order. The evidence is offered for the purpose of showing the workings of the order, insofar as it affects the various defendants here?

Mr. Crump: That is correct.

The Court: You may proceed.

J. A. STEWARD

called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name.

The Witness: J. A. Steward.

The Court: May I suggest that you ask leading questions.

Mr. Crump: Yes.

(Testimony of J. A. Steward.)

Direct Examination

By Mr. Crump:

Q. Mr. Steward, where do you live? [127]

A. Redlands, California.

Q. And you are connected with the Mutual Orange Distributors? A. I am.

Q. What capacity? A. Sales manager.

Q. How long have you been engaged in that occupation? A. 21 years as sales manager.

Q. Mutual Orange Distributors was organized when? A. 1906.

Q. It is a sales organization, that is, a general marketing organization handling oranges, lemons and grapefruit in the states of California and Arizona? A. Yes.

Mr. Worthington: I object to that as incompetent, irrelevant and immaterial.

The Court: That is a preliminary question.

Q. There are 11 associations at present for which it handles lemons, all but one of which are located in California? A. Yes.

Q. And all of the California associations are cooperatives; that is, nonprofit cooperative associations? A. Correct.

Q. Chula Vista Mutual Lemon Association, Glendora Cooperative Citrus Association, Index Mutual Association, La Verne Cooperative Citrus Association, Ventura County Orange and Lemon Association and Whittier Mutual Orange and Lemon

(Testimony of J. A. Steward.)

Association are affiliated with Mutual Orange Distributors?

A. Yes, they are members of it.

Q. And Upland Orchards, until it went out of business? A. Yes, sir.

Q. When did it go out of business? [128]

A. Last summer. I don't know the exact date.

Q. After the prorate went into effect?

A. Yes, after the prorate went into effect.

Mr. Crump: Now, I will ask questions not of a preliminary nature, and I assume they will be objected to, and that the court will sustain the objection, so that I will proceed with the offer of proof.

Mr. Worthington: May I ask the court to consider that each of the questions——

The Court: Let me ask you, what you expect to prove by this witness.

Mr. Crump: I expect to prove by this witness the method of operation of the Mutual Orange Distributors, as the agency of these defendants, and the operations before and after the prorate order went into effect, for the purpose of showing the effect that the order had on the order of the business of the defendants.

The Court: Well, the court will hold that such evidence is immaterial; and if you desire to amplify your offer, it seems to me that it should not be necessary to go into detail as to what you expect to prove.

Mr. Crump: Well, if your Honor please, I re-

(Testimony of J. A. Steward.)

spectfully request permission to do so, in order that this court might get this picture as to what the offer of proof—

The Court: It will be easier to listen to it than argue.

Mr. Crump: All right. Then, I offer to prove by this witness the following facts:

“The policy of Mutual Orange Distributors (which will be referred to for convenience as ‘M.O.D.’) is to endeavor to sell all of the fruit that is offered to it, to the best advantage. Over many years it has developed a market for its products through private sale, rather than through auctions, although there are some sales made [129] at public auction. About 90 to 95 per cent of its lemon sales are interstate, and about 95 per cent of the interstate sales are made at private sale, about 75 per cent being made on direct orders. Four or five per cent of the interstate sales are made through the auctions, but this amount was getting less and less each year until Order No. 53 became effective, June 1, 1941.

“About 25 per cent of the interstate sales are made without orders, those not sold at auction being rolled, that is to say, shipped to a destination where it is anticipated the market will purchase the fruit upon its arrival.

“M.O.D. sells through auction only as a last resort. That is to say, there are certain cars

(Testimony of J. A. Steward.)

that cannot be sold at private sale at prices which the organization thinks should be received for them, sometimes because the sizes do not suit the regular buyers, or because the lemons have arrived at the markets in a condition showing some percentage of decay, necessitating quick disposal.

“In the final analysis the price paid for lemons is the price which the consumer is willing to pay; but so far as the trade is concerned—that is, the trade that buys lemons in wholesale carlots—the price being realized at the auction terminals more or less fixes the price obtainable for lemons in private sale markets. Private sales are not published to the trade, and there is no way in which the trade or competitors can know what prices are obtained at private sale. Private sale prices are not always exactly the same as auction prices, but if the price in the auction market is continuously downward for a few days, the private sale buyer will [130] consider the market weak, and therefore offers less, and vice versa if the prices are advancing in the auctions. Sales are sometimes made privately at a price above the auction prices, and sometimes at a lower price, but it is not the practice of M.O.D. to sell at private sale at less than the auction prices. The only time that would happen would be when in our judgment

(Testimony of J. A. Steward.)

as to market conditions, that is, the supply and demand as a whole, we decided that the market is weak and the auction prices are fictitiously high compared to the general demand throughout the country. Then we may reduce our private sale quotations a little below the then prevailing auction prices.

“When M.O.D. was first organized, in 1906, it started business as an orange marketing organization. There may then have been a few growers who had oranges and also had lemons and sold the lemons through M.O.D., but our lemon tonnage did not really start to develop until about 20 or 25 years ago. At that time it was generally understood in the trade that California Fruit Growers Exchange was handling about 98 per cent of the lemons produced in the country.

“The lemon business of M.O.D. developed in this way: As our orange business increased, that is, as our volume of oranges increased, and we built up a reputation for oranges under our ‘Pure Gold’ trademark, our orange customers demanded lemons from us under the same trademark. That development began about 1925 or 1926. Then we undertook to get more lemons in our organization, but made no particular solicitation of growers for a few years, until we had made arrangements with Great Atlantic & Pacific Tea Company, which I be-

(Testimony of J. A. Steward.)

lieve [131] was in 1927, to buy our oranges almost exclusively. In other words, they were to buy from us all that we could supply for their requirements. At that time they requested us to increase our lemon tonnage, because they also wanted to have our lemons. Since then our lemon tonnage has grown until this year we are handling about 8 per cent of the total shipments.

“M.O.D. receives standing orders for lemons, by which I mean that a customer will place an order with us at a certain time, requesting that we ship it regular supplies of lemons—say one, two or three cars a week, whatever their minimum requirements may be. In addition to these orders, as the season progresses and the demand increases, as it usually does, the customer will place individual orders for an extra car or two to be shipped. We have a limited number of standing orders that run throughout the twelve months, but the greater number are placed with us in the spring of the year for lemons to be supplied throughout the months of June, July and August.

“When orders are received, it is our practice to investigate through our associations as to the supply of lemons they have and anticipate they will have as the season goes along, and as to the sizes they estimate will be available. We offer the orders to the associations that are in position to fill them.

(Testimony of J. A. Steward.)

“Standing orders usually are placed with the larger associations that have the larger volume of lemons each week to ship, such as Ventura County Orange & Lemon Association and La-Verne Cooperative Citrus Association. Some of the smaller houses receive some of these standing orders through what we call a pooling system. We place the order with one of the salesmen in our office, [132] who contacts, daily or oftener, these small associations and assembles the lemons from the different houses into carloads that may fit such orders. Those particular orders would not be placed with any packing house in writing, but would be handled as a pool car.

“We have a large house at Chula Vista, known as Chula Vista Mutual Lemon Association, but the demand for its lemons being mostly in the southern market, it usually has all the regular orders it can take care of, which makes it unnecessary for us to apportion the standing orders to it. This association has built up over a period of years a business for its brand of small size lemons in the southern states, that part of the country taking that size of lemons to a greater extent than northern states. The lemons grown in the district serviced by Chula Vista Mutual Lemon Association do not keep as long in storage as lemons grown in other districts, and as the

(Testimony of J. A. Steward.)

demand for this type or size of lemons develops in the southern states much earlier in the year than the heavy demand for lemons in the northern states, it is necessary for this association to dispose of the greater percentage of its crop over a shorter period of time than is the case, for instance, with associations handling lemons grown in Ventura County.

“We call the managers of our associations and ask whether we can get the orders which we have on hand filled. If none of them can fill the orders, naturally we have to advise the buyer that we have not the lemons available, or cannot ship them for some restricted reason. We frequently receive orders for a particular brand of lemons, that is, lemons handled by a particular association shipping under its own brand name as well as [133] under our trade name. Our trade name for first grade or fancy lemons is ‘Pure Gold’, and for second grade or choice lemons is ‘Silver Seal’. We do not ship third grade or standard lemons.

“Lemons are picked to size, and when shipped are shipped in standard boxes, there being 406 of these boxes to a carload.

“Lemons are referred to in the trade according to the number which will pack into a standard box; for instance, if 300 lemons will pack into a standard box they are known as 300’s. The sizes run as follows: 180’s, 210’s, 240’s,

(Testimony of J. A. Steward.)

252's, 300's, 360's, 432's, 442's, 490's, 588's, and 640's. The heaviest demand is for 300's and 360's, but in the southern states, where the demand for small sizes is heavier than it is in the northern states, the trade will buy straight cars of 432's to 640's.

"In the operation of M.O.D. and its member associations the quantity of lemons to be shipped is determined chiefly by the regular customers. They require a certain amount of lemons to be shipped, and if we have them, that is the program we follow in trying to take care of our business.

"Prior to the time Order No. 53 went into effect, M.O.D. was able to sell and ship substantially all of its marketable fruit. As a matter of policy, however, it made a practice of eliminating from fresh fruit channels all except its first and second grade fruit.

"Billings and routings on interstate sales are handled through the sales department of M.O.D. To illustrate: An employee of a packing house telephones the sales department of M.O.D. that that house has one or [134] more cars ready to ship, and the sales department of M.O.D. gives it a destination, unless there is a standing order or written order on file with the packing house which specifies the point to which the car or cars are to be shipped, in which event the house has already received its

(Testimony of J. A. Steward.)

instructions and there would no necessity for its telephoning.

“Under our contract with our member associations each association has the right to designate where its cars are to go, but as a matter of practice it is left entirely to the sales department of M.O.D.

“There is no competition between M.O.D. houses so far as interstate sales are concerned, but there is a competition between handlers in interstate commerce, that is, between marketing organizations rather than between handlers in each organization.

“In my opinion it is unnecessary to have a prorate program, such as the one set forth in Order No. 53, at the present time, in order to secure a stabilized movement of lemons.

“Lemons are controlled by very few shippers. Outside of the California Fruit Growers Exchange and M.O.D., there is only about 3 or 4 per cent of the lemons handled by other shippers. I cannot see how the small percentage outside of the California Fruit Growers Exchange could have any effect on the market.

“Inasmuch as our lemons are distributed in about 160 markets, on the average, throughout the United States and Canada, and are spread over a twelve-month period, and we undertake to ship our lemons at the time the customers want them, and sell nearly all of our lemons

(Testimony of J. A. Steward.)

at private sale, there is nothing in our operations which [135] would interfere with anybody else, or that would cause any excess shipments at any particular time.

“Lemons will keep in storage only for a limited time. Some become tree-ripe on the tree; that lemon is considered a weaker lemon and won't hold in storage more than two to four weeks. Then there is the silver lemon, which reaches size and can be picked when it becomes silver, not when green. This type of lemon in some districts may be weaker than silvers grown in other districts, and this will vary from season to season. Silver lemons will hold a little longer than tree-ripes. Then there are light greens, which will hold a little longer than silvers, and the dark greens which will hold anywhere from four to six months in storage.

“When we have no restriction on the time we can move lemons, we naturally give consideration to the lemon that needs to be moved even though the demand, that is, the market price, is not as good as we anticipate we will be able to get if those lemons could be shipped later. Nevertheless, it is better business to ship and sell those lemons in their prime condition, even though less is obtained for them. The growers will thus make more money, or at least lose less money than they would if instead

(Testimony of J. A. Steward.)

of shipping these lemons they were sent to by-products.

“Order No. 53 limiting our shipments of lemons has resulted in our having to keep lemons back, that is in storage, beyond the point where they were in good condition for shipment, which in turn resulted in our having to ship inferior keeping quality of lemons. Lemons of this type do not give consumer or trade satisfaction, and the result is a substantial reduction in the price received by growers. The trade loses confidence in any [136] brand of lemons which does not arrive in the market in prime condition. To explain what I mean: Lemons may arrive in the market in fairly sound condition; when the jobber buys them they appear to be good-keeping lemons, but by the time he disposes of them they may have developed 5, 10, 15 or 20% shrinkage, and when a jobber buys lemons which on the surface appear to be sound, but the life of which is in fact about exhausted, he takes a loss when he disposes of them. This necessarily results in a loss of confidence on the part of the trade, reduces the trade demand, produces dissatisfaction with the retailer and ultimate consumer, and substantially reduces the returns to the growers, not only by reason of the prices offered for lemons being reduced, but because consumers will not buy unless they have con-

(Testimony of J. A. Steward.)

fidence in the quality of the fruit offered for sale.

“The absence of regulation of marketing of lemons has not adversely affected the movement of lemons in interstate or foreign commerce by causing excessive or untimely movement of such fruits to market in the United States or Canada. There have been fluctuations in the price at which lemons are sold by handlers and the price paid to growers thereof from time to time, but these fluctuations were no greater before Order No. 53 became effective than they have been since. There is no connection between the fluctuation in the price of lemons and the regulation of marketing by proration.”

We now offer in evidence a circular letter dated November 19, 1941, being a letter addressed to all handlers of lemons, from the Lemon Administrative Committee, by R. L. MacRae, Assistant Secretary.

Mr. Crump then stated that he had a number of exhibits to [137] use in connection with the offers of proof. Said letter, dated November 19, 1941 was marked defendant's Exhibit “A” for identification.

Mr. Crump: May it be understood that it is not necessary for us to lay the foundation, since the court is ruling that it isn't material, in connection with these exhibits?

Mr. Worthington: Yes.

(Testimony of J. A. Steward.)

Mr. Crump: Otherwise, I would have to take up time offering to lay the foundation. Or I can offer in each instance to lay the foundation.

The Court: You are not objecting to them because of lack of foundation, but simply that they are immaterial?

Mr. Worthington: Simply incompetent, irrelevant and immaterial.

Mr. Crump: Very well.

Mr. Crump then continued reading the offer of proof, as follows:

“The letter of November 19, 1941, shows very clearly that the volume of shipments is not the thing that controls the price. Take, for instance, the season 1941—during the week ending August 9th under proration the highest price for the season was reached, \$4.75. Four weeks later the lowest price was reached, \$2.32. In 1940 when there was no proration the highest price was reached in the week ending August 2, \$6.17, and the lowest price was not reached until seven weeks later, \$2.31. In the week ending July 5, 1941, 717 cars were shipped, and the price was \$4.65 F.O.B. In the year 1940, 307 cars moved during the same week and the price was only \$2.73. This is reversed when we refer to the week ending July 26, when shipments of 577 cars were made in 1941, at the price of \$3.17, and in 1940, 642 cars were shipped and the [138] price was \$3.75.

(Testimony of J. A. Steward.)

But a still better example would be the week ending August 2nd, 1941, when 705 cars were shipped at a price of \$4.04, whereas for the same week in 1940, 716 cars were shipped at a price of \$6.17.

“The number of cars shipped in any particular week does not appear to be, and is not the controlling factor with reference to price. The factors controlling prices in the market are weather conditions, which have the greatest influence and which are unpredictable at the time of shipment, health conditions, the condition of the lemons themselves in the market upon arrival, the sizes that are being shipped, and to some extent consumer income.

“A satisfactory price for lemons is a price which will return to the grower a reasonable interest on his investment. It is a mooted question as to what that price should be. It depends on the percentage of the crop sold; for instance, if half of the crop is eliminated, the price for the remainder has to be much higher than as though the larger percentage of the crop is sold.

“The jobbing trade is not subjected to increased risks in a market which is not controlled by a prorate order, that is, a market controlled by a proration order such as Order No. 53. The jobber is able to take care of himself and prefers to buy his lemons when he

(Testimony of J. A. Steward.)

needs them and when he thinks he can make money out of them, rather than have a specified number of cars shipped each week.

“I have made a computation to determine whether the return per acre to the grower is controlled by the per box price, or is reflected in the per box price. This consists of a type-written compilation showing half the crop packed and shipped and the remainder diverted to [139] by-products; also showing three-fourths of the crop packed and shipped and one-fourth diverted to by-products; also showing 90% of the crop packed and shipped and 10% diverted to by-products.

“We start out with a 10 acre grove and assume that the average yield on a five year basis is 4330 field boxes, less 216 boxes, or 5% eliminated as unfit for by-products, leaving 4114 field boxes. Then we take one-half of the crop packed and shipped at a delivered price of \$4.50, which price is taken in this instance because it is the price which the proponents of Order No. 53 testified at the promulgation hearing before the United States Department of Agriculture was the lowest price which would return a reasonable profit to the growers.”

Mr. Crump then offered in evidence the compilation referred to in the offer, and the same was marked defendants' Exhibit “B” for identification.

(Testimony of J. A. Steward.)

Mr. Worthington: May it please the court, I understand these offers are all a part of the offer he is making.

Mr. Crump: That is correct.

Mr. Worthington: And not separate offers. But when he finishes reading his offer, I understand that my objection will go to these.

Mr. Crump: It is understood that the objections to the offer of proof will go to the exhibits, as well as the offer of proof.

The Court: Very well. Go ahead.

“Mr. Crump: Referring to Exhibit ‘A’, the witness has prepared a summary showing similar percentages as regards M.O.D.”

At this time we offer in evidence the summary referred to as the next exhibit.

The Court: Mark it C for identification. [140]

(The document referred to was marked “Defendants’ Exhibit C for identification.”)

“Mr. Crump: The witness has prepared a summary showing the amounts of the allotments given to the various houses of M.O.D., the certificates of adjusted allotments, the total of packed boxes and cars, the alleged overshipments and undershipments, the forfeits, the by-products reduced to packed boxes and cars, and the amount of alleged violation in packed boxes and cars. This summary consists of a summary for all M.O.D. houses, with separate summaries for the several houses including

(Testimony of J. A. Steward.)

Libby Fruit Packing Company, Orange County Citrus Growers, Inc., and Escondido Cooperative Citrus Association, who are not defendants in these cases. The information contained in these tabulations was furnished by the Lemon Administrative Committee, the only change from that information being the conversion from packed boxes into cars on the basis of 406 boxes to a car."

And we offer this in evidence as the next exhibit.

The Court: It may be marked as Exhibit D for identification.

(The document referred to was marked "Defendants' Exhibit D for identification.")

Mr. Crump then continued reading from the offer of proof as follows:

"Since the defendant associations affiliated with M.O.D. began complying with Order No. 53 because of the restraining orders issued in these consolidated cases, there have been times when there was a shortage of lemons in the interstate market, notably the State of Washington, in the month of July, 1941, when and where there were insufficient lemons to fill the consumer demand, which [141] resulted in an exorbitantly high price to consumers and a loss of net profits to the growers, which could have been avoided had Order No. 53 not been in effect and had M.O.D. been permitted to fill

(Testimony of J. A. Steward.)

its orders and ship the lemons available for shipment which it had on hand.”

“The witness has prepared a tabulation showing the percentage of interstate lemon shipments by M.O.D. compared with the total California shipments for the seasons 1929-30 to 1940-41.”

We offer this tabulation as the next exhibit.

The Clerk: Exhibit E for identification.

(The document referred to was marked “Defendants’ Exhibit E for identification.”)

Mr. Crump then continued reading from the offer of proof as follows:

“On June 1, 1941, when the first allotments were issued under Order No. 53, M.O.D. had orders on hand, including standing orders, for one or more carloads per customer weekly during the season, and after June 1, 1941, it continued to receive standing orders from time to time, as well as additional orders for immediate shipment. These orders were received from regular customers who desired to purchase lemons from M.O.D., and who had for many years past purchased lemons from M.O.D. These orders reflected minimum requirements of the customers based upon their experience in previous years, regardless of price, and could and would have been filled by M.O.D., and its member associations at prevailing

(Testimony of J. A. Steward.)

prices, except as it and its member associations were prevented from filling said orders by reason of Order No. 53.

“From June 1, 1941, to August 31, 1941, the associations affiliated with M.O.D. received certificates of ad- [142] justed allotments to the extent of 345.1 carloads. Actual shipments interstate were 448.9 carloads. Shipments in excess of adjusted allotments (all within the first five weeks of the operation of Order No. 53) were 89.2 carloads. During this same time, that is to say from June 1st to August 31st, 1941, M.O.D. and its member associations had on hand orders which it and they were unable to fill, as follows: Standing orders placed with member associations 84 cars; individual orders placed with member associations 17 cars; standing orders received by M.O.D. from regular customers, which were not placed with any member association but were offered to all associations from time to time and not accepted because of their inability to fill the orders, 68 cars; individual orders received by M.O.D. from regular customers, which were not placed with member associations because of their inability to fill the orders, 88 cars; total 257 cars. Of this total of 257 cars the members associations of M.O.D. who are defendants herein had on hand lemons of the grades and sizes necessary to fill such orders, to the extent of 200

(Testimony of J. A. Steward.)

cars, and they would have filled said orders to the extent of 200 cars if they had not been prevented from so doing by said Order No. 53.

“In addition to the 200 cars which the member associations of M.O.D. could and would have sold and shipped interstate had it not been for Order No. 53, such member associations could and would have shipped an additional 50 cars of lemons.

“All of the lemons which could and would have been so shipped, both on order and otherwise, could and would have been shipped at a net profit to the growers whose lemons were handled by M.O.D. and its member associations. [143] The direct loss to the growers whose lemons are handled by M.O.D. and its member houses, from June 1, 1941, to October 31, 1941, by reason of the limitation of shipments of their lemons under Order No. 53, is in excess of \$270,000.

“The natural and necessary effect of Order No. 53 is to take away from M.O.D. and its member associations their regular customers and compel their customers to purchase their lemons from California Fruit Growers Exchange.

“The ultimate effect of Order No. 53, if continued in operation, will be to force all handlers out of business, except California Fruit Growers Exchange, and create in that Exchange a complete monopoly in the handling of lemons.

(Testimony of J. A. Steward.)

“Said Order will also compel M.O.D. and its member associations to sell a larger percentage of their lemons through the auction markets, with the resulting loss of net returns to the growers, for the reason that the limitation on shipments effected by Order No. 53 prevents M.O.D. and its member associations from filling orders and from advising its regular customers that it will be unable to fill their orders.”

At this time I offer in evidence a tabulation showing packed lemon shipments—I think those are interstate?

The Witness: Yes.

Mr. Crump: —interstate, by months, for the seasons 1939-40, and the season 1940-41.

The Court: It may be marked for identification next in order.

The Clerk: Exhibit F for identification.

(The document referred to was marked “Defendants’ Exhibit F for identification.”) [144]

Mr. Crump: I now offer in evidence the tabulation showing the operations of the Lemon Prorate Order No. 53, as it has affected M. O. D. and its member houses, from June 1, to October 31, of 1941, to which I have referred.

The Clerk: Exhibit G for identification.

(The document referred to was marked “Defendants’ Exhibit G for identification.”)

(Testimony of J. A. Steward.)

Mr. Crump: That is my offer of proof from this witness.

Mr. Worthington: May it please the court, I object to the offer on the ground that it is incompetent, irrelevant and immaterial.

The Court: I have heretofore held that I consider this evidence immaterial, but I am giving Judge Crump an opportunity of protecting his record.

Mr. Worthington: May I ask at this time——

Mr. Crump: I think Mr. Worthington is also protecting his record by objecting to the offer of proof, as well as the——

Mr. Worthington: Yes. In view of the great rapidity and length of the offer I would like to reserve my right to cross examine the present witness.

The Court: No, I will not permit any cross examination, because it isn't in evidence. There isn't a thing in there that I have admitted in evidence. There is no cross examination necessary.

Mr. Worthington: May I ask, if the court is going to allow the details, read by Judge Crump in the offer of evidence, to be made a part of the Appellate record?

The Court: It will be an offer of proof.

Mr. Worthington: Which, however, will not show the details——

Mr. Crump: We have a right to show the details. That is the purpose of making an offer of proof so that the upper court will know what it is.

(Testimony of J. A. Steward.)

Mr. Worthington: I would like to ask, if your Honor please, if the court ruled that it isn't accepting the offer of proof as part [145] of the record for the Appellate Court?

The Court: It is part of his offer of proof. It is admitted for that purpose only.

Mr. Worthington: And limited only to that?

The Court: Yes. As the court has indicated heretofore, this court feels that it is beyond its power to go behind Order No. 53. An examination of that will be necessary in the upper court, in their review, to go into the evidence that they are now offering. But at the same time, as Judge Crump has indicated here, he is in two courts, and he wants to be heard in one of the proceedings. And to protect himself he is offering it in this one, so that it will not be deemed as a waiver of any of his rights.

Mr. Crump: That is right.

The Court: And for that reason, I am giving counsel a full opportunity of protecting the record, so that if the Circuit Court should hold that I am in error in not admitting this evidence, then it will come back and have to be tried on the issues, and those issues presented.

Mr. Crump: And the only way the Circuit Court can know whether the evidence should be admitted is to know what it is.

The Court: The Circuit Court certainly, I assume, would not attempt to pass upon the weight to be given to that evidence, if they hold that the

(Testimony of J. A. Steward.)

court is wrong. It is simply presenting to the Circuit Court the evidence that they have offered to present here.

Mr. Worthington: So long as that is clearly understood——

Mr. Crump: I don't think there can be any question about it. The Circuit Court will see this evidence; this is what we offer; if they think the evidence should have been admitted they will send the case back, at which time Mr. Steward will have a chance to testify.

Mr. Worthington: Just so it is understood.

The Court: It isn't evidence in the case.

Mr. Worthington: And not being accepted as evidence, even [146] for the Circuit of Appeals.

Mr. Crump: It goes in the record to show the Circuit Court of Appeals what we wanted to prove.

The Court: I can't control what the Circuit Court of Appeals does. As far as this court is concerned, I am not receiving it as evidence.

Mr. Crump: I have four more of these statements, which are short matters.

The Court: I will give you two hours to get your breath, Judge Crump. We will take a recess until 2:00 o'clock.

Mr. Crump: Yes.

The Court: Wouldn't it be sufficient, inasmuch as you have these offers in writing, that you make a general statement. The writings will be deemed as read, and made a part of the record, as you offer.

(Testimony of J. A. Steward.)

Mr. Crump: Well, if the court would bear with me for a couple of hours this afternoon I will get it all in the record. I think that is the proper way to do it. There may be some parts here that your Honor might want to make a different ruling on.

The Court: Well, of course, I assume that the Government when you finish will then make an offer of proof to the contrary; but as I said before, I want to be consistent in my rulings. I hope to be.

Mr. Crump: Yes.

A. A. RIESLAND

called as a witness on behalf of defendants, testified as follows:

That he resided at Chula Vista; that his occupation was Lemon packing house manager, and Secretary-Treasurer of the Chula Vista Mutual Lemon Association; that he had been engaged as such manager since 1926.

Mr. Crump: I will state to your Honor that the evidence [147] offered by this witness, as well as that offered by the last witness, and those which I will offer by subsequent witnesses, is offered to prove that by reason of the allegations of the respective answers, in the affirmative portions of the answers, that Order No. 53, and the Orders of the Secretary supplementing said Order, all and each thereof is unjust, unreasonable, arbitrary and dis-

(Testimony of A. A. Riesland.)

criminatory as to the respective defendants, and this said Order and the Orders of the Secretary supplementing said Order, each and all constitute an unwarranted and unlawful exercise of the police powers, and are violative of the Fifth Amendment of the Constitution of the United States in that they deprive the respective defendants of their property without due process of law.

I make that statement at this time so that it may apply not only to the testimony already given or offered by Mr. Steward, but as to each of the witnesses, and I presume it will not be necessary for me to repeat that.

The Court: It will be deemed.

Mr. Crump: I presume that the same ruling will apply to this witness, as to Mr. Steward.

The Court: You can make your offer.

Mr. Crump: Very well.

We offer to prove by this witness that,

“Chula Vista Mutual Lemon Association is a handler of lemons, which since 1926 has marketed lemons in interstate commerce through Mutual Orange Distributors, as selling agent. Chula Vista Mutual Orange Distributors, as selling agent. Chula Vista Mutual Lemon Association is a cooperative nonprofit corporation, organized under the laws of California. It handles from 550 to 650 carloads of lemons annually. In the season of 1940-41 it shipped approximately 425 cars of lemons in inter-

(Testimony of A. A. Riesland.)

state commerce. This Association handles only lemons. The Association has had a steady growth [148] from its inception. In 1926-1927 it handled about 75 carloads for 30 growers. In the year 1940-1941 it handled 645 cars of lemons for 175 growers. From November 1, 1940, to and including October 31, 1941, this Association shipped interstate 163,732 packed boxes. It sold intrastate 3715 packed boxes, and sent to by-products lemons culled at the washer, 36,979 packed boxes, and culled from pack-out, 43,072, making a total of lemons handled of 247,498 boxes. The total field boxes received during the same period and converted to packed boxes was 279,427."

That is the number of packed boxes.

"The difference between this amount and the 247,498 packed boxes is accounted for by shrinkage and decay in the amount of 31,929 boxes. Of the 247,498 packed boxes referred to, 135,641 were handled from November 1, 1940, to May 31, 1941, and 111,857 from June 1, 1941, to and including October 31, 1941. The 135,641 boxes handled between November 1, 1940, and May 31, 1941, are accounted for as follows:

Interstate shipments.....	92,678
Intrastate shipments.....	917
By-products (culled at washer).....	22,944
By-products (culled from pack-out).....	19,102

(Testimony of A. A. Riesland.)

“Of the 111,857 boxes handled from June 1 to October 31, 1941, 71,054 were shipped in interstate commerce, 2798 were sold intrastate, 14,034 were disposed of to by-products (culled at washer) and 23,971 were disposed of to by-products (culled from pack-out).

“The foregoing figures showing amount of culls at washer are based on total movement of fruit for the periods given, irrespective of the amount of fruit washed. Actually the 22,944 boxes culled prior to June 1st were [149] out of 187,667 boxes washed, or 12.23% culls, while the 14,034 boxes culled at the washer after June 1st were out of 61,955 boxes, or 22.65% culls, so that the actual cullage at the washer after June 1st, based on the amount of the fruit washed, was almost twice as heavy as the cullage prior to June 1st. In previous years when operations were not curtailed by Order No. 53, the cullage at the washer was always much heavier prior to June 1st of each season than it was after June 1st.

“This Association handles a comparatively large percentage of small size fruit. The packed fruit averages from 440 to 450 lemons per box in size and virtually all of it is sold in the Southern states at private sales. Less than 3% on the average of packed fruit has been sold at auction. From June 1, 1941, to October 31, 1941, the percentage of sales at auction in-

(Testimony of A. A. Riesland.)

creased to over 6%. This increase was the direct result of the operation of Order No. 53. Chula Vista Mutual Lemon Association has regular customers who have bought from it year in and year out for more than ten years, almost exclusively, and more than 90% of the lemons sold in fresh fruit form are sold in the Southern states. More than 50% of the fruit handled by the Association is tree ripe when picked. Prior to June 1, 1941, this Association had market outlets for all of its merchantable lemons. The heaviest demand for the small lemons handled by this Association is in April, May and June. The tree ripe lemons handled by this Association will keep in storage not over 30 days, after which they deteriorate rapidly and decay and become unfit for market. On June 1, 1941, this Association had about 150 cars of lemons in storage. It had orders for 20 carloads on hand that should have been filled the week previously. [150] It was that far behind in filling its orders. During the month of May, 1941, the Association was shipping about 17 or 18 cars a week. Its allotment for the second week in June was less than 5 carloads. For the third week in June its allotment was between 4 and 5 carloads; and for the last week in June its allotment was between 4 and 5 carloads.

“This Association began complying with Order No. 53 in the week beginning July 6,

(Testimony of A. A. Riesland.)

1941. It has storage capacity for between 160 and 170 cars which was adequate for it to operate efficiently under conditions existing before Order No. 53 became effective. In order to continue to operate under Order No. 53 it is necessary that this Association have additional storage to the extent of at least 50 cars, and air conditioning equipment which will cost more than \$50,000.00. Otherwise, it will be unable to ship more than one-third of its merchantable lemons.

“Operating under Order No. 53 the quality of fruit sent to market is inferior to the quality of the fruit shipped when the Order is not in effect. The reason for this is that the allotments given to this Association are so small in amount as to require it to keep fruit in storage until it has begun to deteriorate and until shrinkage and decay have set in in substantial amounts. Order No. 53 has required this Association to eliminate, either by dumping or sending to by-products, a large proportion of its fruit, which it otherwise could and would have sold in fresh fruit form interstate. Order No. 53 has compelled this Association to advise its customers of its inability to supply their orders and has resulted in its customers buying lemons from California [151] Fruit Growers Exchange, which they otherwise would have bought from it.

“If Order No. 53 continues in effect, it will

(Testimony of A. A. Riesland.)

result in California Fruit Growers Exchange obtaining a complete monopoly of the market of lemons and in compelling this Association and other Associations similarly situated to retire from business as lemon handlers. If this Association had not over-shipped during the month of June, 1941, its growers would not have received any profit for the past season from lemons handled by Chula Vista Mutual Lemon Association. The lemons shipped by this Association in interstate commerce during the month of June, 1941, were sold on a high market and if this Association had complied with Order No. 53 prior to the week beginning July 6, 1941, it would have had to eliminate more than 37 cars of lemons which it did, in fact, ship and sell at a profit to its growers. This Association sells interstate only Fancy or First Grade and Choice or Second Grade lemons. These are sold under the brands of "Gilt Edge" and "Silver Lining", respectively, and these brands of "Gilt Edge" and "Silver Lining", together with the trade names for similar fruit used by Mutual Orange Distributors, to-wit, "Pure Gold" and "Silver Seal" have become well and favorably known to the trade which desires to continue to buy the lemons handled by this Association, and which would continue to buy all merchantable lemons of this Association were it not prevented from so doing by Order

(Testimony of A. A. Riesland.)

No. 53. The greatest asset of this Association is the good will which it has built up over a period of years and which has resulted in the demand for lemons handled by it and this asset will be largely, if not entirely, lost to this Association by its inability [152] to fill the requirements of its regular customers because of the limitation of shipments under Order No. 53. The type of lemons handled largely by this Association differs from the type handled by most handlers, in that small size lemons must be shipped while the demand is heaviest in the Southern states, which is ordinarily in April, May and June of each year. Order No. 53 does not permit of sufficient shipments during these months to enable this Association to dispose of the fruit which its business requires that it dispose of prior to July 1st of each year, whereas Associations handling larger percentages of green lemons and larger sized lemons have their biggest demand and best prices ordinarily during the months of July, August and September of each year.

“Hence, Order No. 53 discriminates against this Association, in that it treats small size tree ripe lemons and large size green lemons as though they were the same product with the same seasonal outlets. To illustrate: An Association having 10 carloads of freshly picked dark green lemons in storage on April 1st can

(Testimony of A. A. Riesland.)

keep those lemons in storage for as long as six months, with the result that its prorated allotments are based upon a six months' storage life of these 10 cars, thus enabling it to sell other lemons during that six months period to the extent of the six months' storage on these 10 cars, whereas Chula Vista Mutual Lemon Association, with 10 carloads of freshly picked small size tree ripers in storage on April 1st, must sell and ship all of those lemons by May 1st, and its prorated allotments under Order No. 53, based on the storage life of these 10 carloads of tree ripe lemons, would permit shipment of other lemons for only 30 days. In other words, the storage [153] of green lemons constitutes a base for allowance of allotments under Order No. 53 for six months, whereas, the storage of tree ripe lemons constitutes a base for allotments for only one month, or to express it differently; assuming one carload of lemons can be shipped each week against 10 carloads in storage. One Association, we will say, has 10 carloads of the tree ripers in storage, which will keep 4 weeks; another association has 10 carloads of greens in storage, which will keep 24 weeks; and as against these 10 carloads, one carload a week can be shipped. It necessarily follows that the association having the 10 carloads of tree ripe lemons can ship against them 4 carloads, whereas the association having 10 car-

(Testimony of A. A. Riesland.)

loads of greens can ship against them 24 carloads, or six times as much. In this manner not only is this Association, but other associations similarly situated, discriminated against by Order No. 53 as against associations handling larger percentages of green lemons. Order No. 53 compelled this Association to send to by-products, or otherwise eliminate, more than 75 earloads of merchantable fruit from July 6, 1941, to October 31, 1941, which it could and would otherwise have sold in interstate commerce at a profit to its growers. This Association's average storage of lemons as of September 1, 1935, to 1940, inclusive, was 6193 boxes, whereas on September 1, 1941, because of the limitations on sales and shipments made requisite by Order No. 53, it had 53,150 boxes in storage. Its average July and August returns to growers in 1941 was \$3.04 per hundred pounds, while its average returns to growers for September and October, 1941, was \$1.35 per hundred pounds. Had it been allowed to ship the 53,150 [154] boxes amounting to 2,498,000 pounds in July and August when its trade was demanding this fruit, it would have returned to its growers for those two months an additional \$75,000.00.

"The September and October returns on 29,400 storage boxes, which this Association was not allowed to ship under Order No. 53 and

(Testimony of A. A. Riesland.)

which it could and otherwise would have shipped, returned approximately \$18,000.00. 20,000 storage boxes of culls were salvaged which brought a return of approximately \$11,000.00. The net loss was approximately \$45,000.00. The better prices are obtained at private sale markets for carloads of straight sizes, that is to say, carloads where there are not more than 2 sizes included; such, for instance, as 300's and 360's and 432's, or straight cars of 490's and smaller. Order No. 53 has a necessary and natural tendency to, and does, in fact, prevent, in most instances, the shipments of carloads of straight sizes or of two sizes.

“Except in the Southern markets in the months of April, May and June, medium size lemons, that is to say, 300's and 360's, bring the best prices. There is a natural and necessary shrinkage in size of lemons in storage. Lemons larger than 300's shrink to a medium size which increases the per box price, for instance; 252's which is the next size larger than 300's, usually brings from 50 cents to a dollar a box less on the market than 300's and 252's will normally shrink in storage to 300's in about 60 days, thereby increasing the market value per box from 50 cents to a dollar a box. On the other hand, 432's will normally shrink in storage to 490's within 30 days with a resulting depreciation in price of from 50 cents to

(Testimony of A. A. Riesland.)

a dollar a box. So also, 490's will [155] shrink to 540's when in storage for 30 days, with a similar depreciation. 540's and smaller, with similar shrinkage, are usually not marketable at all. The market for small size lemons, that is to say, lemons smaller than 360's, in substantial quantities is limited to about four months a year, that is to say, April, May, June and July, during which months small size lemons ordinarily bring better prices than large size lemons, whereas there is, throughout the year, a more or less steady demand for 300's and 360's.

“These facts further illustrate and emphasize the discrimination created by and inherent in Order No. 53 as against small size and tree ripe lemons. Small size tree ripe lemons, such as are handled by this Association, because of their short storage life and the limited period in which they can be marketed and sold and because of the shrinkage which occurs in storage, constitute practically a perishable fruit similar to peaches, apricots and other deciduous fruits, which has to be shipped almost immediately after picking. Order No. 53, nevertheless, groups this type of lemons with green lemons which can be kept in storage for as long as six months and which can be marketed to advantage through the year. Thus Order No. 53, in effect, regulates the marketing of two different

(Testimony of A. A. Riesland.)

types of crops under one proration plan, which two types of crops do not, in fact, compete with each other, and which it is neither practicable nor fair to include within one prorate order or plan, and which is not contemplated or permitted by the Act. It costs just as much to grow a small tree ripe lemon as it does to grow a large size green lemon, but the natural and necessary effect of Order No. 53 is to [156] permit the shipment of much larger quantities of green lemons than of tree ripe lemons, particularly small tree ripe lemons, regardless of market demands. This also results in a discrimination against growers and handlers of tree ripe lemons.

“For the week beginning June 1, 1941, the Secretary of Agriculture, pursuant to recommendations of the Lemon Administrative Committee, fixed the allotment of Chula Vista Mutual Lemon Association at 2673 packed boxes.”

“Similarly, for the week beginning June 8, 1941, the allotment of this Association was fixed at 1959 packed boxes.

“Similarly for the week beginning June 15, 1941, the allotment of this Association was fixed at 2206 packed boxes.

“Similarly, for the week beginning June 22, 1941, the allotment of this Association was fixed at 2307 packed boxes, which was subsequently changed to 2402 boxes.

(Testimony of A. A. Riesland.)

“Similarly, for the week beginning June 29, 1941, the allotment of this Association was fixed at 2555 packed boxes.

“Similarly, for the week beginning July 6, 1941, the allotment of this Association was fixed at 2149 packed boxes.

“Similarly, for the week beginning July 13, 1941, the allotment of this Association was fixed at 2281 packed boxes.

“Similarly, for the week beginning July 20, 1941, the allotment of this Association was fixed at 1959 packed boxes.

“Similarly, for the week beginning July 27, 1941, [157] the allotment of this Association was fixed at 3537 packed boxes.

“Similarly, for the week beginning August 3, 1941, the allotment of this Association was fixed at 3176 packed boxes.

“Similarly, for the week beginning August 10, 1941, the allotment of this Association was fixed at 4009 packed boxes.

“Similarly, for the week beginning August 17, 1941, the allotment of this Association was fixed at 1836 packed boxes.”

“Similarly, the Secretary has fixed allotments of this Association for each week subsequent to the week ending August 24, 1941, in varying amounts, for which certificates of allotments and certificates of adjusted allotments have been issued by said Committee. At

(Testimony of A. A. Riesland.)

no time have the allotments fixed for this Association been sufficient in amount to enable it to fill the requirements of its customers or to market the merchantable lemons which it had available for marketing in interstate commerce and which it could and would otherwise have marketed.”

WARD DANIELS,

called as a witness on behalf of the defendants testified as follows:

I reside at Ventura, California; I am Manager of the Ventura County Orange and Lemon Association, one of the defendants herein, and have been engaged in that occupation eleven years.

The Court: Is it stipulated it may be deemed as read, and become part of the record without reading it?

In fact, the court will so order.

(The statement deemed read into the record is as follows:) [158]

“We offer to prove by this witness the following facts:

“Ventura County Orange and Lemon Association has sufficient storage capacity in its lemon packing house at Montalvo, Ventura County, California, for about 350 cars of lemons. The packing house at Montalvo handles

(Testimony of Ward Daniels.)

only lemons. When Order No. 53 went into effect in April, 1941, this Association had a storage capacity of only 105 cars, which was sufficient to enable it to operate economically and successfully under the method of operation in effect prior to Order No. 53. The increased storage has been taken care of by the erection of a new building and the installation of additional equipment, the construction of said building being commenced in March, 1941, and being made necessary solely by reason of the anticipation of volume proration of a federal order. The construction and installation was sufficiently finished on May 24, 1941, to permit of the use of the additional storage facilities, but packing operations did not begin in the enlarged plant until July, 1941.

“The expense of the additional construction and installation made necessary by the anticipated Proration Order and made necessary by Order No. 53 was approximately \$132,000.00.

“The additional storage was required to operate under Order No. 53 because at certain periods of the year lemon picks of growers, whose lemons are handled by Ventura County Lemon and Orange Association, are much heavier than at other times and the amount of fruit which the Association is permitted to ship under Order No. 53 is not sufficient to take care of all marketable fruit being picked or of all market-

(Testimony of Ward Daniels.)

able fruit for which orders [159] have been received.

“Under Order No. 53 it is necessary to keep lemons in storage for a longer period of time than it was previously necessary to keep them. The keeping of lemons in storage for a longer period of time than was customary or necessary under the marketing methods used before Order No. 53 became effective, which marketing methods were modern and efficient, has resulted in deterioration in much of the fruit before it could be shipped. While dark green lemons will keep in storage six months, it is advisable to ship them as soon as they are cured in order that they may reach the consumer while the fruit still has plenty of life left in it. If dark green lemons are shipped, that is to say, lemons which are dark green when picked, after being in storage for six months, there is little life left in them when they reach the consumer. When we refer to ‘Consumer’ and ‘Market’ we are referring to lemons which are shipped in interstate commerce and not those consumed locally in the State of California.

“Ventura County Lemon and Orange Association is a cooperative marketing corporation, engaged in the business of packing and selling lemons through Mutual Orange Distributors in interstate commerce since 1932. It handles lemons for more than one hundred growers, having

(Testimony of Ward Daniels.)

approximately a producing acreage of two thousand acres. Lemons can only practically and economically be packed and shipped in less than carload lots when shipped with other citrus fruits, which frequently cannot be done. Ventura County Lemon and Orange Association cannot compete successfully with other handlers or compete with other handlers at all, if it is not [160] permitted to pack and ship at least three carloads at a time, and frequently it is necessary to pack at least four or five carloads at a time, depending upon sizes and grades of lemons on hand and the market demand.

“When limited in our shipments, as we have been under Order No. 53, there have been many times when we have not been able to pack and ship the number of cars necessary in order to operate on a sound, economical or practical basis, with a resulting loss of fruit and of profits to our growers by reason of the necessity of rehandling fruit and because of increased deterioration and decay. To illustrate: Assume, as has often been the case, that we have an order from Boston for a carload of first grade 300’s and larger, or 406 packed boxes. It would be necessary for us to pack at least 1100 standard boxes to get these 406 boxes. If we take the figure of 1100 packed boxes necessary to obtain a carload of first grade 300’s and larger, there would be left 694 boxes of various grades

(Testimony of Ward Daniels.)

and sizes. Based upon our experience and the average run of lemons handled by our houses, these 694 boxes would be of such grades and sizes as to necessitate the packing of approximately three and one-half or more cars in order to obtain sufficient quantities of grades and sizes to be segregated into carloads in order to meet market demands. This illustration is typical of packing operations in our house. In other words, it would be necessary to pack six carloads in order to fill the Boston order and to avoid rehandling of the lemons left over.

“In packing lemons for market, we first take a storage box and dump the contents onto a moving belt and from there on to a conveyor into the waxing machine. [161] From the waxer it goes on to a grading table and all sizes and grades in the storage box go on to this table. They are there separated according to grades, standards or third grade fruit and culls being taken out first and sent to by-products; choice or second grade is put on another moving belt and fancy or first grade fruit is permitted to go through on the original belt. Both first and second grade fruit is packed and ordinarily all sizes are packed. As the lemons come from the grader onto the packing belt they are packed, but it is not practicable, in order to fill an order for 300's and larger first grade lemons, to pack only those grades and sizes for the

(Testimony of Ward Daniels.)

reason that the fruit which did not meet the requirements of this order would have to be put back in storage and rehandled, which increases decay and deterioration with a consequent loss of market value, and this also adds to the expense of handling. Before we were compelled by Order No. 53 to change our packing and shipping methods, less than two per cent of the fruit sent over the grader was returned to storage. This percentage has been necessarily increased by the operation of Order No. 53 and has at times been as high as fifty per cent. Of this fruit returned to storage a large part, which would otherwise be merchantable, either has to be sent to by-products or decays before it can be shipped.

“There is also a shrinkage in the weight and size of this fruit because of the prolonged storage, which proportionately decreases the returns to the growers. The rehandling of lemons more than doubles the handling cost.

“Order No. 53 has compelled us to keep our fruit [162] in storage beyond the time when it was in the best condition to market and would bring the best prices. Under the operation of this Order, the growers, whose lemons are handled by Ventura County Orange and Lemon Association, have made and will make less money that they would have made or would make if there were no such limitation on ship-

(Testimony of Ward Daniels.)

ments. To illustrate this: In the month of May, 1941, we packed fifty-three per cent out of 10,000 storage boxes. After the prorate went into effect, with the same quality of fruit, out of 10,000 storage boxes we packed only thirty-three per cent, because the necessity for holding the fruit in storage, due to limitations on our shipments effected by Order No. 53, reduced its quality and grade.

“The percentage of fruit sent to by-products and eliminated, as well as the percentage of intrastate sales, has substantially increased since June 1, 1941. This witness has prepared a tabulation taken from the records of Ventura County Orange and Lemon Association, showing packed box shipments interstate, intrastate sales, by-products disposals and elimination for the year beginning November 1, 1940, and also segregated as to that period of the year from November 1, 1940, to May 31, 1941, inclusive, and that period from June 1, 1941, to November 1, 1941; that is to say, to and including October 31, 1941. Total filled boxes received which, for convenience has been converted to packed boxes, for the season beginning November 1, 1940, was 235,094. Total packed boxes disposed of in fresh fruit from and to by-products, as well as that eliminated by dumping, totaled 230,817 boxes. Additional shrinkage and decay, not included in the items of interstate

(Testimony of Ward Daniels.)

ship- [163] ments, intrastate sales, by-products and elimination, amounted to 4277 boxes for the year. 152,909 packed boxes were sold in interstate, representing 66.247% of the total of 230,817 packed boxes; 21,661, or 9.384%, were sold intrastate; 53,783, or 23.301%, went to by-products; and 2,464, or 1.068%, were eliminated by dumping. For the period from November 1, 1940, to May 31, 1941, 88,156 boxes, or 80.701%, were disposed of interstate as against 64,753, or 53.260% for the period from June 1 to October 31, inclusive. From November 1 to May 31, 1,313 boxes, or 1.202%, were sold intrastate as against 20,348 boxes, or 16.736%, from June 1 to October 31, inclusive. From November 1, 1940, to May 31, 1941, 18,044 boxes, or 16.518%, were sent to by-products, as against 35,739, or 29.396%, for the period from June 1 to October 31, inclusive. From November 1, 1940, to May 31, 1941, 1725 boxes, or 1.579%, were eliminated by dumping, as against 739 boxes, or .068%, for the period from June 1 to October 31, inclusive. Of the total of 230,817 boxes, 109,238 were disposed of either by interstate or intrastate sales or by-products disposal or elimination, from November 1, 1940, to May 31, 1941, and 121,579 boxes during the period from June 1, to October 31, 1941. The increase in percentage of intrastate sales after November 1, 1941, is directly

(Testimony of Ward Daniels.)

ascribable to the operation of Order No. 53. Likewise, the increase in percentage of disposal of fruit to by-products was occasioned by the operation of that Order. Normally, the percentage of by-products disposal would have been greater during the period from November 1 to May 31, than the percentage of disposal during the subsequent period for the season. When Order No. 53 became [164] operative on the first of June, 1941, Ventura County Orange and Lemon Association had on hand more standing orders than it could fill, even without a prorated. It then had a backlog of at least 15 orders. All orders were received through Mutual Orange Distributors, the selling agency, and many of these orders were for one or more carloads a week in some instances during the remainder of the season and generally during the months of June, July, August and September.

“Ventura County Orange and Lemon Association has built up an interstate trade over a period of many years with regular customers who prefer the fruit handled by this Association and whose trade has become familiar with the trade and brand names of the lemons handled by this Association. In order to fill the orders of these customers, it is necessary that shipments move to market in accordance with their demands. In order to supply the de-

(Testimony of Ward Daniels.)

mand of its customers, this Association must know several weeks, and sometimes months, in advance of the volume it is going to be able to supply. This type of operation is radically different from sales at auction.

“Following the effective date of Order No. 53, the Secretary of Agriculture, acting upon the recommendations of the Lemon Administrative Committee, fixed the total quantity of lemons which might be handled in the current of interstate commerce for the weekly period beginning June 1, 1941, at 263,900 packed boxes and the allotment of this Association at 3251 packed boxes.

“Similarly, for the week beginning June 8, 1941, the Secretary fixed the total quantity at 233,450 packed boxes, and the allotment of this Association at 2876 pack- [165] ed boxes, which allotment was subsequently adjusted to 2733 packed boxes by deducting 143 boxes for alleged over-shipment.

“Similarly, for the week beginning June 15, 1941, the Secretary fixed the total quantity at 223,300 packed boxes and the allotment of this Association at 2802 packed boxes. -

“Similarly, for the week beginning June 22, 1941, the Secretary fixed the total quantity at 233,450 packed boxes, or 575 cars, and the allotment of this Association at 2930 packed boxes.

(Testimony of Ward Daniels.)

“On June 24, 1941, on the recommendation of said Committee, the Secretary increased the total quantity for the week beginning June 22nd from 575 to 700 cars and the allotment of this Association to 3567 packed boxes, which was subsequently adjusted to 3161 boxes for alleged over-shipments of 406 packed boxes.

“Similarly, for the week beginning June 29, 1941, the Secretary fixed the total quantity at 243,600 packed boxes, and the allotment of this Association at 2828 packed boxes.

“On July 2, 1941, on the recommendation of said Committee, the Secretary increased the total quantity fixed for the week beginning June 29, 1941, from 600 to 700 cars, and the allotment of this Association to 3300 packed boxes, which was subsequently adjusted to 3581 packed boxes, for an under-shipment of 281 boxes the previous week.

“Similarly, for the week beginning July 6, 1941, the Secretary fixed the total quantity at 284,200 packed boxes, and the allotment of this Association at 3300 packed boxes, which was subsequently adjusted to 3227 [166] by deducting 73 boxes for an alleged over-shipment.

“Similarly, for the week beginning July 13, 1941, the Secretary fixed the total quantity at 263,900 packed boxes, and the allotment of this Association at 3068 boxes, which allotment was subsequently adjusted to 3265 boxes because of

(Testimony of Ward Daniels.)

an under-shipment of 177 boxes in the previous week.

“Similarly, for the week beginning July 20, 1941, the Secretary fixed the total quantity at 233,450 packed boxes, and the allotment of this Association at 2731 packed boxes, which allotment was subsequently changed to 2703 packed boxes because of an alleged over-shipment of 28 packed boxes.

“Similarly, for the week beginning July 27, 1941, the Secretary fixed the total quantity at 223,300 packed boxes, and the allotment of this Association at 2930 packed boxes.

“On July 29, 1941, on the recommendation of said Committee, the Secretary increased the total quantity fixed for the week beginning July 27th from 550 cars to 700 cars, and the allotment of this Association to 3729 packed boxes, which was subsequently changed to 1370 boxes because of an under-shipment of 77 boxes in the previous week and a loan made by this Association to La Verne Cooperative Citrus Association of 2436 packed boxes.

“Similarly, for the week beginning August 3, 1941, the Secretary fixed the total quantity at 243,600 packed boxes, and the allotment of this Association at 3196 packed boxes.

“On August 5, 1941, on the recommendation of said Committee, the Secretary increased the total quantity fixed for the week beginning

(Testimony of Ward Daniels.)

August 3, 1941, from 600 [167] to 700 cars, and the allotment of this Association at 3729 packed boxes, which was subsequently changed to 3133 packed boxes to allow for a return of 1218 packed boxes loaned to LaVerne Cooperative Citrus Association, less an alleged over-shipment of 94 packed boxes.

“Similarly, for the week beginning August 10, 1941, it subsequently fixed the total quantity at 284,200 packed boxes and the allotment of this Association at 4704 packed boxes, which allotment was subsequently adjusted to 5865 boxes to allow for an alleged under-shipment of 406 packed boxes and loan paid back by La Verne Cooperative Citrus Association of 1218 packed boxes, less borrowings paid back of 57 packed boxes and less an alleged forfeit of 406 packed boxes.

“Similarly, for the week beginning August 17, 1941, the Secretary fixed the total quantity at 162,400 packed boxes and the allotment of this Association at 2688 packed boxes, which was subsequently adjusted to 3731 packed boxes to allow for 1218 packed boxes loaned to La Verne Cooperative Citrus Association less alleged over-shipment of 175 packed boxes.

“Similarly, the Secretary of Agriculture has fixed total quantities and the allotments of this Association for each week subsequent to the week ending August 24, 1941, in varying

(Testimony of Ward Daniels.)

amounts, for which certificates of allotment and certificates of adjusted allotment have been issued by the Lemon Administrative Committee.

“The allotments given Ventura County Orange & Lemon Association for each week beginning with June 1, 1941, to and including the week beginning August 17, 1941, as compared to the total quantities permitted to be shipped each week under Order No. 53, are typical of the [168] amount of allotment as compared to total quantities permitted to be shipped during the operation of Order No. 53.

“The natural and necessary result of the limitation of shipments under Order No. 53, insofar as this Association is concerned, has been, is, and will continue to be, during the operation of Order No. 53, to require this Association to eliminate from interstate fresh fruit trade channels large quantities of merchantable lemons, which it could, and otherwise would sell and ship in interstate commerce, at prices which would return a profit to the growers; and Order No. 53, as operated and as intended to operate, has caused, is causing, and will cause the loss of many thousands of dollars to this Association and its grower members.

“This is inherent in, and the necessary result of any limitation on shipments in interstate commerce on the basis of weekly or bi-weekly allotments, and any limitation on quan-

(Testimony of Ward Daniels.)

tities which may be shipped, with corresponding prorate allotments to this association, will have the same effect, unless the total quantities permitted to be shipped under Order No. 53 are fixed by the Secretary of Agriculture for each week in sufficient amounts to permit of a free movement of lemons in interstate commerce, which is contrary to the purpose, intent and theory of Order No. 53.

“During the period from June 1, 1941, to August 31, 1941, Ventura County Orange & Lemon Association received allotments totaling 52,375 packed boxes, or 129 carloads. During the same period this Association received orders for more than 100 carloads of lemons which it was unable to fill. During the same period this [169] Association had on hand merchantable lemons which it could and would have used to fill such orders to the extent of more than 60 carloads, but which it was prevented from selling and shipping in interstate commerce by reason of the operation of Order No. 53. All of said lemons could have been sold by this Association at prices which would have returned a substantial profit to the growers, but by reason of the limitations placed upon this Association in its marketing of lemons by Order No. 53 it was compelled to, and did divert such lemons to by-products, with a consequent loss to its growers of many thousands of dol-

(Testimony of Ward Daniels.)

lars. The highest price paid for by-products fruit during the months of June, July and August, 1941, was equivalent to 80 cents a packed box less a handling charge of 25 cents a packed box, which was less than one-half of the cost of production, including picking and hauling.

“Ventura County Orange and Lemon Association sells less than two per cent of its lemons at auction and approximately eighty per cent on order. It sells interstate only first grade or fancy and choice or second grade lemons, which are sold through Mutual Orange Distributors under the respective trade names of ‘Pure Gold’ and ‘Silver Seal’ and under the first grade brands of ‘Golden Acres’ and ‘Good Advice’ and second grade brand of ‘Silver Craft’. In order to return a per box profit to our growers it is necessary to sell lemons interstate at an average f.o.b. return of \$3.00 per box. The operation of Order No. 53 has substantially increased the costs to the growers, whose lemons are handled by Ventura County Orange and Lemon Association and reduced their returns correspondingly. The cost of operation [170] has been increased by the necessity of handling fruit more than once, the requirement of larger storage, the necessity for keeping an operating force on hand, which, without the prorate, could operate six days a week, but under the

(Testimony of Ward Daniels.)

limitations of the prorate actually operates in packing operations three to four days a week. This increased labor expense alone approximates \$40.00 a day.

“By reason of the limitations on its operations affected by Order No. 53, Ventura County Orange and Lemon Association and its growers have lost and are losing regular customers who are compelled to purchase lemons from other handlers.

“The only competitor of Mutual Orange Distributors and its member houses, including this Association, with a sufficient volume of lemons and sufficient prorate allotments and without sufficient private sale outlets to dispose of its lemons otherwise than by auction sales, is California Fruit Growers Exchange, which controls approximately ninety per cent of the total product in the United States. The natural and necessary effect of Order No. 53 is to take away from this Association its regular customers and compel its customers to purchase their lemons from California Fruit Growers Exchange.

“The ultimate effect of Order No. 53, if continued in operation, will be to force all handlers out of business, except California Fruit Growers Exchange, and create in that Exchange a complete monopoly in the handling of lemons.

“Said Order will also compel this Associa-

(Testimony of Ward Daniels.)

tion to sell a larger percentage of its lemons through the auction markets with a resulting loss of net returns [171] to the growers, for the reason that the limitation on shipments effected by Order No. 53 prevents this Association from filling orders and from advising its regular customers that it will be able to fill their orders.

“About ninety-five percent of the fruit sold interstate at auction is fruit handled by California Fruit Growers Exchange whose brand and trade names are established on the auctions and which has developed an auction demand which enables it to receive higher prices at auction sales than prices which are received by competitors, including this Association, whose brand and trade names have not been exploited by means of the auctions.

“This requires the growers whose lemons are handled by this Association and other handlers not affiliated with the California Fruit Growers Exchange, to compete with that Exchange in the sale of lemons to buyers who have purchased from the California Fruit Growers Exchange over a period of years, at the same time losing trade outlets which this Association and other non-Exchange handlers have developed over a period of years.

“This witness has caused to be prepared under his supervision from the records of Ventura County Orange and Lemon Association a

(Testimony of Ward Daniels.)

statement showing the amount of lemons in storage on the first day of September for each of the years 1935 to 1941, inclusive. He has caused to be prepared under his supervision from the records of this Association a tabulation showing interstate sales, intrastate sales, by-products disposal, and elimination, together with the amount of packed boxes handled and disposed of and also shrinkage and decay for the season [172] beginning November 1, 1940, and ending October 31, 1941. These we offer in evidence.

“Until the prorate went into effect under Order No. 53 this Association has been able to dispose of all of its merchantable lemons in interstate business to regular customers. An occasional car which could not be economically packed in grades and sizes to meet customers’ demands was sent to auction and cars were occasionally rolled for the same reason. By rolling, I mean shipping carloads of fruit without advance order to destinations outside of the State of California, where it is anticipated they can be disposed of profitably.

“This Association does not make a practice of rolling cars, but as explained it is necessary to pack fruit in addition to that required to fill orders and fruit thus packed may not meet the requirements of any order on hand and hence will be rolled to be disposed of in a market which will absorb various sizes and grades.

(Testimony of Ward Daniels.)

“Ventura County Orange and Lemon Association, again complying with Order No. 53, in the week beginning June 22, 1941”—

And I will offer in evidence, in connection with the offer of proof of this witness, a statement showing field box average f.o.b. packing house returns for 1940-41, for pools 1 and 2; pool No. 1 covering months of December, January and February; pool No. 2 covering the months of March, April and May, as the next exhibit.

The Clerk: Exhibit H for identification.

(The document referred to was marked “Defendant’s Exhibit H for identification.”)

Mr. Crump: And also a statement showing the percentage sent into by-products from pools No. 2 and 3 for the year 1941. [173]

Q. That would be, Mr. Daniels, the year 1940-1941; the year beginning 1940?

A. The year beginning 1941; pools 2 and 3.

Q. Well, the year beginning 1941 is not yet over, is it? It doesn’t end until October of this year?

Mr. Worthington: Is this offered as evidence?

Mr. Crump: No, it is merely preliminary to identifying the exhibit.

A. Let me see the exhibit.

Q. That refers to last year, doesn’t it; 1940-1941?

A. Last year. That starts with December, on pool No. 2.

Q. But the season is 1940-1941?

(Testimony of Ward Daniels.)

A. That is right.

Mr. Crump: All right, we will offer this.

The Court: It may be marked for identification.

The Clerk: Exhibit I for identification.

(The document referred to was marked "Defendant's Exhibit I for identification.")

C. I. CARTWRIGHT,

called as a witness on behalf of the defendants, testified as follows:

I reside at La Verne, California; I am Secretary-Manager of the LaVerne Cooperative Citrus Association, one of the defendants herein, and have been such since July, 1924.

Mr. Crump: We offer to prove by this witness the facts as set forth in the statement, which I will ask if it may be stipulated——

The Court: It may be deemed as read, and become part of the record. The reporter is directed to insert it into the record, the same as if it had been read in open court.

Mr. Crump: Yes, your Honor. [174]

(The statement deemed read into the record is as follows:)

"We offer to prove by this witness the following facts:

"La Verne Cooperative Citrus Association is a handler of lemons, engaged for many years in

(Testimony of C. I. Cartwright.)

handling lemons in interstate commerce, through Mutual Orange Distributors as its selling organization. 95% of the merchantable fruit of La Verne Cooperative Citrus Association is handled in interstate commerce; about 2% in intrastate commerce. It handles lemons for growers having about 680 acres. Less than 5% of the lemons handled in fresh fruit form are sold at auction; about 75% are handled on orders.

“This Association began complying with Order No. 53 in the week beginning June 15, 1941.

“For the week beginning June 1, 1941, the Secretary of Agriculture, pursuant to recommendations of the Lemon Administrative Committee, fixed the allotment of this Association at 3557 packed boxes.

“Similarly for the week beginning June 8, 1941 the allotment of this Association was fixed at 2741 packed boxes.

“Similarly for the week beginning June 15, 1941, the allotment of this association was fixed at 2282 packed boxes.

“Similarly for the week beginning June 22, 1941, the allotment of this Association was fixed at 2498 packed boxes.

“Similarly for the week beginning June 29, 1941, the allotment of this Association was fixed at 2692 packed boxes.

“Similarly for the week beginning July 6,

(Testimony of C. I. Cartwright.)

1941, the allotment of this Association was fixed at 2683 packed boxes. [175]

“Similarly for the week beginning July 13, 1941, the allotment of this Association was fixed at 2586 packed boxes.

“Similarly for the week beginning July 20, 1941, the allotment of this Association was fixed at 1728 packed boxes.

“Similarly for the week beginning July 27, 1941, the allotment of this Association was fixed at 5367 packed boxes.

“Similarly for the week beginning August 3, 1941, the allotment of this Association was fixed at 1709 packed boxes.

“Similarly for the week beginning August 10, 1941, the allotment of this Association was fixed at 1734 packed boxes.

“Similarly for the week beginning August 17, 1941, the allotment of this Association was fixed at 1218 packed boxes.

“Similarly the Secretary has fixed total quantities and allotments of this Association for each week subsequent to the week ending August 24, 1941, in varying amounts, for which certificates of allotments and certificates of adjusted allotments have been issued by said Committee.

“None of the allotments issued to this Association have been sufficient in amount to enable it to fill regular orders received from its cus-

(Testimony of C. I. Cartwright.)

tomers who have done business with it over a period of many years. Such customers have been compelled to buy lemons from competitors of this Association, particularly California Fruit Growers Exchange, which they would otherwise have bought from this Association, and which except for Order No. 53 [176] this Association would have sold to them from and after the time when it began complying with Order No. 53.

“The total number of field boxes of lemons passing through the house of this Association from November 1, 1940, to October 31, 1941, inclusive, converted to packed boxes was 242,714. Of this 236,227 packed boxes were disposed of in fresh fruit form and to by-products and eliminated by dumping. In addition there was a shrinkage of 6487 packed boxes while in storage. Of the 236,227 packed boxes disposed of from November 1, 1940, to and including October 31, 1941, 159,488, or 67.52% were sold in interstate commerce; 2811, or 1.19%, were sold intrastate. 66,107, or 27.98%, were sent to by-products, and 7821, or 3.31% were otherwise eliminated.

“Before the prorate became effective, that is to say from November 1, 1940, to May 31, 1941, inclusive, this Association handled 129,103 packed boxes, of which 96,795, or 74.98%, were sold interstate; 1014, or .78% were sold

(Testimony of C. I. Cartwright.)

intrastate; 29,143, or 22.57%, were sold to by-products, and 2151 or .167%, were eliminated by dumping.

“During the period from June 1, 1941, to and including October 31, 1941, 107,124 boxes were handled, of which 62,693, or 58.52% were sold interstate; 1797, or 1.68%, were sold intrastate; 36,964, or 34.51%, were sold to by-products; 5670, or 5.29%, were eliminated by dumping.

“The figures from June 1 to October 31 include fruit in Pool No. 4, some of which was held over until after November 1st and accounted for in January, 1942.

“The normal elimination and by-products for the period from November 1 to May 31 in each year is heavier [177] than for the period from June 1 to October 31, but this normal condition has been changed by Order No. 53. Of the by-products percentage of 34.51% for the period from June 1, 1941, to October 31, 1941, approximately 12% would normally have been sent to by-products, and of the elimination of 5.29% for the same period, approximately 3% would normally have been eliminated. In other words, the elimination for the period from June 1, 1941, to October 31, 1941, was increased by Order No. 53 and the operation of said order. The increase chargeable to the operation of this order was approximately

(Testimony of C. I. Cartwright.)

80 cars. Of this at least 60 cars could and would have been sold in interstate commerce by this Association, with a profit to the growers whose fruit is handled by this Association, had it not been prevented from selling the same by Order No. 53. In other words, La Verne Cooperative Citrus Association could and would have sold during the 1940-41 season at least 60 carloads of lemons which it was prevented from selling by the limitations placed upon its shipments by Order No. 53. This represents a loss to the growers whose lemons are handled by this Association of more than \$40,000 net.

“This Association has a storage capacity of 120 cars for lemons, but in order to operate under Order No. 53 it is necessary for it to increase its storage because of the necessity of keeping a larger quantity of lemons in storage and keeping lemons in storage for a longer period of time under said Order, by an additional 75 to 100 cars, which additional storage, with the necessary equipment, will cost about \$800 a car.

“Of the 60 cars which this Association was compelled by Order No. 53 either to send to by-products or to dump [178] at least 75% could and would have been sold on regular orders.

“This Association sells its lemons under the Mutual Orange Distributors trade names of

(Testimony of C. I. Cartwright.)

‘Pure Gold’ for fancy or first grade, and ‘Silver Seal’ for its choice, or second grade lemons. It has its own brands, i.e., ‘Pride of La Verne’ for first grade, and ‘Sweet Briar’ and ‘Pansy’ for second grade. This Association sells no third grade or standard lemons in interstate commerce.

“The lemons dumped by this Association during the operation of the prorate were a total loss to it and its growers, and those sent to by-products during the same period returned to the growers less than the cost of production.

“Under Order No. 53 it is necessary to keep lemons in storage for a longer period of time than it was previously necessary to keep them. The keeping of lemons in storage for a longer period of time than was customary or necessary under the marketing methods used before Order No. 53 became effective, which marketing methods were modern and efficient, has resulted in deterioration in much of the fruit before it could be shipped.

“While dark green lemons will keep in storage six months, it is advisable to ship them within three or four months in order that they may reach the consumer while the fruit still has plenty of life left in it. If dark green lemons are shipped, that is to say, lemons which are dark green when picked, after being in storage for six months there is little life

(Testimony of C. I. Cartwright.)

left in them when they reach the consumer. When we refer to 'Consumer' and 'Market' we are referring to lemons which are shipped in [179] interstate commerce and not those consumed locally in the State of California.

"In packing lemons for market, we first take a storage box and dump the contents on to a moving belt and from there on to a conveyor into the waxing machine. From the waxer it goes on to a grading table and all sizes and grades in the storage box go on to this table. They are there separated according to grades, standards or third grade fruit and culls being taken out first and sent to by-products; choice or second grade is put on another moving belt, and fancy or first grade fruit is permitted to go through on the original belt. Both first and second grade fruit is packed and ordinarily all sizes are packed. As the lemons come from the grader onto the packing belt they are packed, but it is not practicable, in order to fill an order for 300's and larger first grade lemons, to pack only those grades and sizes, for the reason that the fruit which did not meet the requirements of this order would have to be put back in storage and rehandled, which increases decay and deterioration with a consequent loss of market value, and this also adds to the expense of handling. Before we were compelled by Order

(Testimony of C. I. Cartwright.)

No. 53 to change our packing and shipping methods, less than two per cent of the fruit sent over the grader was returned to storage. This percentage has been necessarily increased by the operation of Order No. 53 and has at times been as high as fifty per cent.

“Of this fruit returned to storage, a large part, which would otherwise be merchantable, either has to be sent to by-products or decays before it can be shipped. There is also a shrinkage in the weight and size of this [180] fruit because of the prolonged storage, which proportionately decreases *and* returns to the growers. The rehandling of lemons more than doubles the handling cost.

“Order No. 53 has compelled us to keep our fruit in storage beyond the time when it was in the best condition to market and would bring the best prices. Under the operation of this Order, the growers whose lemons are handled by La Verne Cooperative Citrus Association have made and will make less money than they would have made or would make if there were no such limitation on shipments.

“La Verne Cooperative Citrus Association has built up an interstate trade over a period of many years with regular customers who prefer the fruit handled by this Association and whose trade has become familiar with the trade and brand names of the lemons handled by

(Testimony of C. I. Cartwright.)

this Association. In order to fill the orders of these customers, it is necessary that shipments move to market in accordance with their demands. In order to supply the demand of its customers, this Association must know several weeks, and sometimes months, in advance, the volume it is going to be able to supply. This type of operation is radically different from sales at auction.

“The natural and necessary result of the limitation of shipments under Order No. 53, insofar as this Association is concerned, has been, is, and will continue to be, during the operation of Order No. 53, to require this Association to eliminate from interstate fresh fruit trade channels large quantities of merchantable lemons, which it could and otherwise would sell and ship in interstate commerce, at prices which would return a profit to the growers; and Order No. 53, as oper- [181] ated and intended to operate, has caused, is causing, and will cause the loss of many thousands of dollars to this Association and its grower members. This is inherent in, and the necessary result of any limitation on shipments in interstate commerce on the basis of weekly or bi-weekly allotments, and any limitation on quantities which may be shipped, with corresponding prorated allotments to this Association, will have the same effect, unless the total quantities

(Testimony of C. I. Cartwright.)

permitted to be shipped under Order No. 53 are fixed by the Secretary of Agriculture for each week in sufficient amounts to permit of a free movement of lemons in interstate commerce, which is contrary to the purpose, intent and theory of Order No. 53.

“By reason of the limitations on its operations effected by Order No. 53, La Verne Co-operative Citrus Association and its growers have lost and are losing regular customers who are compelled to purchase lemons from other handlers. The only competitor of Mutual Orange Distributors and its member houses, including this Association, with a sufficient volume of lemons and sufficient prorated allotments, and without sufficient private sale outlets to dispose of its lemons otherwise than by auction sales, is California Fruit Growers Exchange, which controls approximately 90% of the total product in the United States. The natural and necessary effect of Order No. 53 is to take away from this Association its regular customers and compel its customers to purchase their lemons from California Fruit Growers Exchange.

“The ultimate effect of Order No. 53, if continued in operation, will be to force all handlers out of business, except California Fruit Growers Exchange, and create in that Exchange a complete monopoly in the handling [182] of lemons.

(Testimony of C. I. Cartwright.)

“Said Order will also compel this Association to sell a larger percentage of its lemons through the auction markets, with a resulting loss of net returns to the growers, for the reason that the limitation on shipments effected by Order No. 53 prevents this Association from filling orders and from advising its regular customers that it will be able to fill their orders. About 95% of the fruit sold interstate at auction is fruit handled by California Fruit Growers Exchange, whose brand and trade names are established on the auctions and which has developed an auction demand which enables it to receive higher prices at auction sales than prices which are received by competitors, including this Association, whose brand and trade names have not been exploited by means of the auctions.

“This requires the growers whose lemons are handled by this Association, and other handlers not affiliated with the California Fruit Growers Exchange, to compete with that Exchange in the sale of lemons to buyers who have purchased from the California Fruit Growers Exchange over a period of years, at the same time losing trade outlets which this Association and other non-Exchange handlers have developed over a period of years.

“Until the prorate went into effect under Order No. 53 this Association has been able to

(Testimony of C. I. Cartwright.)

dispose of all of its merchantable lemons in interstate business to regular customers. An occasional car which could not be economically packed in grades and sizes to meet customers' demands were sent to auction, and cars were occasionally rolled for the same reason. [183]

"By rolling, I mean shipping carloads of fruit without advance order to destinations outside of the State of California, where it is anticipated they can be disposed of profitably. This Association does not make a practice of rolling cars, but, as explained, it is necessary to pack fruit in addition to that required to fill orders and fruit thus packed may not meet the requirements of any order on hand and hence will be rolled to be disposed of in a market which will absorb various sizes and grades."

G. E. ESTABROOK,

called as a witness on behalf of the defendants, testified as follows:

I reside near La Habra, California, and I am Manager of the Index Mutual Association, one of the defendants herein. I have been engaged in that occupation for three years; before that I was connected with this Association as foreman for about fourteen years.

Mr. Crump: At this time we offer to prove by

(Testimony of G. E. Estabrook.)

this witness the facts as set forth in the written statement, which I will ask may be treated the same as the preceding statements.

The Court: Yes.

Mr. Crump: The statement to be copied in the record.

(The statement deemed read into the record is as follows:)

“We offer to prove by this witness the following facts:

“Index Mutual Association has sufficient storage capacity in its lemon packing house at La Habra, Orange County, California, for about 35 cars of lemons, which was sufficient storage to enable it to operate economically and successfully under the method of operation in effect prior to Order No. 53. [184]

“In order to operate under Order No. 53 it is necessary for this association to have additional storage of at least 15 cars. The expense of additional construction and installation made necessary by Order No. 53 will be approximately \$10,000.

“Additional storage is required to operate under Order No. 53 because at certain periods of the year lemon picks of growers whose lemons are handled by Index Mutual Association are much heavier than at other times, and the amount of fruit which the association is permitted to ship under Order No. 53 is not suffi-

(Testimony of G. E. Estabrook.)

cient to take care of all marketable fruit being picked, or of all marketable fruit for which orders have been received.

“Under Order No. 53 it is necessary to keep lemons in storage for a longer period of time than it was previously necessary to keep them. The keeping of lemons in storage for a longer period of time than it was customary or necessary under the marketing methods used before Order No. 53 became effective, which marketing methods were modern and efficient—has resulted in deterioration in much of the fruit before it could be shipped.

“While dark green lemons will keep in storage six months, it is advisable to ship them within three or four months in order that they may reach the consumer while the fruit still has plenty of life left in it. If dark green lemons are shipped, that is to say, lemons which are dark green when picked, after being in storage for six months, there is little life left in them when they reach the consumer. When we refer to ‘consumer’ and ‘market’, we are referring to lemons which are shipped in interstate commerce and not those consumed locally [185] in the State of California.

“Index Mutual Association is a cooperative marketing corporation, engaged in the business of packing and selling lemons and other citrus fruits through Mutual Orange Distributors in

(Testimony of G. E. Estabrook.)

interstate commerce. It handles lemons for approximately 32 lemon growers having a producing acreage of approximately 207 acres in California.

“Lemons can only practically and economically be packed and shipped in less than carload lots when shipped with other citrus fruits, which frequently cannot be done. Index Mutual Association cannot compete successfully with other handlers, or compete with other handlers at all, if it is not permitted to pack and ship at least three carloads at a time, and frequently it is necessary to pack at least four or five carloads at a time, depending upon sizes and grades of lemons on hand and the market demand.

“When limited in our shipments, as we have been under Order No. 53, there have been many times when we have not been able to pack and ship even one carload of lemons, nor to pack and ship the number of cars necessary in order to operate on a sound, economical or practical basis, with resulting loss of fruit and of profit to our growers, by reason of the necessity of rehandling fruit, and because of increased deterioration and decay.

“In packing lemons for market, we first take a storage box and dump the contents onto a moving belt, and from there on to a conveyor, into the waxing machine. From the waxer the

(Testimony of G. E. Estabrook.)

fruit goes onto a grading table, and all sizes and grades in the storage box go onto this table. They are there separated according to grades, [186] standards and third grade fruits and culls being taken out first and sent to by-products; choice, or second grade, is put on another moving belt, and fancy, or first grade, is permitted to go through on the original belt. Both first and second grade fruit is packed, and ordinarily all sizes are packed.

“As the lemons come from the grader onto the packing belt they are packed, but it is not practicable in order to fill an order for 300’s and larger first grade lemons, to pack only those grades and sizes, for the reason that the fruit which did not meet the requirements would have to be put back in storage and re-handled, which increases decay and deterioration, with a consequent loss of market value, and this also adds to the expense of handling.

“Before we were compelled by Order No. 53 to change our packing and shipping methods, none of the fruit sent over the grader was returned to storage. Since the operation of Order No. 53 there have been times when this association has been compelled to return to storage as much as 30 per cent of the fruit passing over the grading belt, which would normally have been packed and shipped. Of this fruit returned to storage, a large part

(Testimony of G. E. Estabrook.)

which would otherwise be merchantable, either has to be sent to by-products or decays before it can be shipped. There is also a shrinkage in the weight and size of this fruit because of prolonged storage, which proportionately decreases the returns to the growers. The re-handling of lemons more than doubles the handling cost.

“Order No. 53 has compelled us to keep our fruit in storage beyond the time when it was in the best condition to market and would bring the best prices. Under [187] the operation of this Order the growers whose lemons are handled by Index Mutual Association have made, and will make less money than they would have made, or would make if there were no such limitation on shipments.

“The percentage of fruit sent to by-products and eliminated has substantially increased since June 1, 1941, by reason of the inability of this association to sell and ship its fruit, occasioned by the small allotments allowed it and the limitation on its shipments under Order No. 53. It was compelled to send to by-products or dump at least eight carloads of merchantable lemons, which it could and would have sold in the regular course of business between June 1, 1941, and August 31, 1941. Lemons dumped were a total loss to the growers, and the best price obtainable from lemons sent

(Testimony of G. E. Estabrook.)

to by-products was less than the cost of production.

"Index Mutual Association, through Mutual Orange Distributors, its selling agent, has built up an interstate trade over a period of many years, with regular customers, who prefer the fruit handled by this and other associations affiliated with Mutual Orange Distributors, and whose trade has become familiar with the trade and brand names of the lemons handled by this association.

"In order to fill orders of these customers it is necessary that shipments move to market in accordance with their demands. In order to supply the demand of these customers, this association must know several weeks, and sometimes months, in advance, the volume it is going to be able to supply. This type of operation is radically different from sales at auction.

"Following the effective date of Order No. 53, the Secretary of Agriculture, acting upon the recommenda- [188] tions of the Lemon Administrative Committee, for the weekly period beginning June 1, 1941, fixed the allotment of this association for lemons which it was permitted to handle in the current of interstate commerce at 726 packed boxes.

"Similarly for the week beginning June 8, 1941, the allotment of this association was fixed at 642 packed boxes, which was subse-

(Testimony of G. E. Estabrook.)

quently changed to 419 packed boxes by deducting 223 boxes for alleged over-shipment.

“Similarly for the week beginning June 15, 1941, the allotment of this association was fixed at 561 packed boxes, which allotment was subsequently adjusted to 574 packed boxes because of an alleged under-shipment of 5 boxes and loans paid back of 8 boxes.

“Similarly for the week beginning June 22, 1941, the allotment of this association was fixed at 713 packed boxes, which was subsequently changed to 662 packed boxes because of an alleged over-shipment of 51 boxes.

“Similarly, for the week beginning June 29, 1941, the allotment of this association was fixed at 572 packed boxes, which was subsequently increased to 667 packed boxes.

“Similarly for the week beginning July 6, 1941, the allotment of this association was fixed at 667 packed boxes, which was subsequently changed to 320 packed boxes because of an alleged over-shipment of 347 boxes.

“Similarly for the week beginning July 13, 1941, the allotment of this association was fixed at 496 packed boxes, which was subsequently changed to 542 packed boxes because of an alleged under-shipment of 46 boxes.

“Similarly for the week beginning July 20, 1941, [189] the allotment of this association was fixed at 439 packed boxes.

(Testimony of G. E. Estabrook.)

“Similarly for the week beginning July 27, 1941, the allotment of this association was fixed at 406 packed boxes, which was subsequently increased to 517 boxes, and then reduced to 134 packed boxes because of an alleged over-shipment of 122 boxes and borrowings paid back of 261 boxes.

“Similarly for the week beginning August 3, 1941, the allotment of this association was fixed at 443 packed boxes, which was subsequently increased to 517 boxes, and again increased to 651 boxes because of an alleged under-shipment of 134 boxes.

“Similarly for the week beginning August 10, 1941, the allotment of this association was fixed at 537 packed boxes, which was subsequently changed to 238 packed boxes, because of an alleged over-shipment of 299 boxes.

“Similarly for the week beginning August 17, 1941, the allotment of this association was fixed at 307 packed boxes, which was subsequently adjusted to 401 boxes, because of an alleged under-shipment of 94 boxes.

“Similarly the Secretary has fixed total quantities and the allotments of this association for each week subsequent to the week ending August 24, 1941, in varying amounts, for which certificates of allotments and certificates of adjusted allotments have been issued by the Lemon Administrative Committee.

(Testimony of G. E. Estabrook.)

“The allotments given Index Mutual Association for each week beginning with June 1, 1941, to and including the week beginning August 17, 1941, as compared to the total quantities permitted to be shipped each week under [190] Order No. 53, are typical of the amount of allotments as compared to total quantities permitted to be shipped during the operation of Order No. 53.

“The natural and necessary result of the limitation of shipments under Order No. 53, insofar as this association is concerned, has been, is, and will continue to be, during the operation of Order No. 53, to require this association to eliminate from interstate fresh fruit trade channels large quantities of merchantable lemons which it could, and otherwise would sell and ship in interstate commerce, at prices which would return a profit to the growers; and Order No. 53, as operated and as intended to operate, has caused, is causing, and will cause the loss of many thousands of dollars to this association and its grower members. This is inherent in, and the necessary result of any limitation on shipments in interstate commerce on the basis of weekly or bi-weekly allotments, and any limitation on quantities which may be shipped, with corresponding prorated allotments to this association, will have the same effect, unless the total quantities

(Testimony of G. E. Estabrook.)

permitted to be shipped under Order No. 53 are fixed by the Secretary of Agriculture for each week in sufficient amounts to permit of a free movement of lemons in interstate commerce, which is contrary to the purpose, intent and theory of Order No. 53.

“Index Mutual Association sells less than 2 per cent of its lemons at auction, and approximately 80 per cent on order. It sells interstate only first grade, or fancy, and choice, or second grade, lemons, which are sold through Mutual Orange Distributors under the respective trade names of ‘Pure Gold’ and ‘Silver Seal’, and under the first grade brand of ‘Index Supreme’ and [191] second grade brand of ‘Goldenrod’.

“In order to return a per box profit to our growers, it is necessary to sell lemons interstate at an average F.O.B. return of \$3.00 per box. The operation of Order No. 53 has substantially increased the cost to the growers whose lemons are handled by Index Mutual Association, and reduced correspondingly their returns. The cost of operation has been increased by the necessity of handling fruit more than once, and the necessity for keeping an operating force on hand, which without the prorated could operate more economically.

“By reason of the limitation on its operations, effected by Order No. 53, Index Mutual Association and its growers have lost and are

(Testimony of G. E. Estabrook.)

losing regular customers, who are compelled to purchase lemons from other handlers, not affiliated with Mutual Orange Distributors.

“The only competitor of Mutual Orange Distributors and its member houses, including this association, with a sufficient volume of lemons and sufficient prorate allotments, and without sufficient private sale outlets to dispose of its lemons otherwise than by auction sales, is California Fruit Growers Exchange, which controls approximately 90% of the total production of lemons in the United States.

“The natural and necessary effect of Order No. 53 is to take away from this association its regular customers and compel its customers to purchase their lemons from California Fruit Growers Exchange. The ultimate effect of Order No. 53 if continued in operation will be to force all handlers out of business, except California Fruit Growers Exchange, and create in that Exchange a complete monopoly in the handling of lemons. [192]

“Said Order will also compel this association to sell a large percentage of its lemons through the auction markets, with a resulting loss of net returns to the growers, for the reason that the limitation of shipments effected by Order No. 53 prevents this association from filling orders, and from advising its regular customers that it will be able to fill their orders.

(Testimony of G. E. Estabrook.)

“About 95% of the fruit sold in interstate at auction is fruit handled by California Fruit Growers Exchange, whose brand and trade names are established on the auctions, and which has developed an auction demand, which enables it to receive higher prices at auction sales than prices which are received by competitors, including this association, whose brand and trade names have not been exploited by means of the auctions. This requires the growers whose lemons are handled by this association, and other handlers not affiliated with California Fruit Growers Exchange, to compete with that Exchange in the sale of lemons to buyers who have purchased from California Fruit Growers Exchange over a period of years, at the same time losing trade outlets which this association and other non-Exchange handlers have developed over a period of years.

“Index Mutual Association began complying with Order No. 53 in the week beginning June 29, 1941.

“On August 11, 1939, this association had 4212 boxes of lemons in storage; on August 9, 1940, it had 2202 boxes in storage; on August 9, 1941, it had 11,653 boxes in storage. This increase in the number of lemons in storage was the direct and necessary result of Order No. 53. Most of the lemons in storage

(Testimony of G. E. Estabrook.)

on August 9, 1941, would have been sold in interstate commerce prior to that [193] date if it had not been for the limitation on shipments of this association, effected by Order No. 53.

“Most of the lemons in storage on August 9, 1941, either had to be dumped by reason of decay and deterioration, or sent to by-products.”

O. W. CAVE

a witness on behalf of defendants, testified as follows:

I am Treasurer-Manager of the Glendora Co-operative Citrus Association, and have been such for six years.

Mr. Crump: At this time we offer to prove by this witness the facts set forth in the affirmative answer of the Glendora Association.

The Court: Read that. What is the point, the same as the others?

Mr. Crump: Similar. I haven't prepared a written statement for this witness, and I am offering to prove by him the facts as set forth in the affirmative answer of the Glendora Association.

The Court: It is similar to the other offers?

Mr. Crump: Yes; only the amounts will be different, and the quantities of allotments.

The Court: Probably you had better state more or less in full what you expect to prove by this witness.

(Testimony of O. W. Cave.)

Mr. Crump: Very well. I expect to prove by this witness the general facts in regard to the industry, as I offered to prove by the other witnesses. And I offer to prove by this witness the amount of allotments and adjusted allotments as set forth in Paragraph 9 of the affirmative answer; that is, the second affirmative defense in the answer of the Glendora Company, and to prove also by him the allegations as set forth in Paragraphs 10 and 11 of the affirmative answer. In connection with the testimony of this witness I also offer in evidence a statement entitled, [194] "Glendora Cooperative Association—Packed box shipments prepared from Pool shipping records," which is similar to the information furnished by other witnesses.

The Clerk: Exhibit J for identification.

(The document referred to was marked "Defendant's Exhibit J for identification.")

C. W. VOLKMER

a witness on behalf of defendants, testified as follows:

I am Manager of the Whittier Mutual Orange and Lemon Association; and have been engaged in that occupation for nine years.

Mr. Crump: Now, I offer to prove by Mr. Volkmer, the manager of the Whittier Mutual Orange and Lemon Association, similar facts as was of-

ferred to be proved by Mr. Cave, including the allegations of Paragraphs 9, 10 and 11 of the answer of the Whittier Mutual Orange and Lemon Association. In that connection, and in connection with that offer of proof I offer a similar statement for the Whittier Association showing packed box disposals, which I will offer as the next exhibit.

The Clerk: Exhibit K for identification.

(The document referred to was marked "Defendant's Exhibit K for identification.")

The two written Stipulations of Facts, hereinbefore set forth in full, (*supra*, p. 146 and p. 147) were then offered in evidence by these appealing defendants, and received in evidence by the Court.

Mr. Crump: That covers our offers at this time.

The Court: Gentlemen, I am going to continue the further hearing of this case until Thursday at 2:00 p.m. There is some [195] question in my mind as to the correctness of my conclusions, insofar as the question of constitutionality is concerned. I have some doubt, and it has been some little time since I have gone over my authorities, and I want an opportunity to recheck. We are getting down to a pretty nice point when you raised the question as to whether or not the question of constitutionality should be raised in this action or in the review, and the court recognizes that it might not be out of place to raise it in this action.

And as I have come to that conclusion I will have to continue the case, then, for the taking of further evidence.

Mr. Weikert then made an offer of proof on behalf of his client, defendant Orange Belt Fruit Distributors, Inc.

The Court (addressing Mr. Weikert): As I understand it, then, the evidence that you desire to offer is evidence that you contend would tend to prove that the workings of the Order by the Committee violated the constitution?

Mr. Weikert: Precisely.

The Court: And, of course, that is the same position that you are taking, is it not, Judge Crump?

Mr. Crump: Yes.

The Court: In other words, you are not attacking the Order itself in this proceeding?

Mr. Crump: I wouldn't say that. We are not attacking the Act, but we are attacking the Order.

The Court: Your offers of proof here are intended to show how the Order has worked out, insofar as your particular clients are concerned?

Mr. Crump: Yes. But I want to make this clear: That we contend that the Order is unconstitutional on its face, because if it operates in accordance with its provisions it is bound to have that effect, and does have the same effect.

The Court: Of course, the question of whether it is uncon- [196] stitutional on its face is a question of law.

Mr. Crump: Well, it is a question of mixed law and fact.

The Court: Well——

Mr. Crump: The reason I say it is a question of mixed law and fact is this: The Court cannot take judicial notice, as I see it, of how an order operates according to its face. That is why I have contended all the time that we were entitled to put in evidence to show the necessary effect of the Order as written.

The Court: By the attack on the order on its face you claim the evidence is admissible to explain——

Mr. Crump: That is it precisely.

The Court: ——explanatory of the order?

Mr. Crump: Precisely.

The Court: And the evidence that you have offered here, and which the Court has refused, you contend tends to establish that?

Mr. Crump: That is right.

The Court: And also tends to establish the fact that the workings of the Order——

Mr. Crump: That is right, but particularly the face. I can understand how, if it is simply that there was some discretion given to the Secretary or the Committee in operating the Order, and they have exercised that discretion in a way which is discriminatory or confiscatory as to these defendants, that we might have to go in and ask the Secretary of Agriculture to change that particular order; I don't mean order No. 53, but the order under 53. Whereas, if the necessary workings of Order No. 53 is going to be confiscatory or discrim-

inatory, then I say we are entitled to introduce that testimony for the purpose of showing that the order on its face is discriminatory and confiscatory, and that any way they operated it is bound to be the same way. [197]

The Court: Now, I would like to ask you your interpretation of Section 608a (6), which reads as follows: (The Court reads said section).

Now, as I understand it, the Government claims that that is a limitation upon the jurisdiction of the Court. Is that your contention?

Mr. Worthington: I think that could be logically argued, your Honor.

The Court: In other words, you claim that Section (6) is a limitation upon the power of the court——

Mr. Worthington: Yes, sir.

The Court: ——to only do specifically the thing that is specified in here?

Mr. Worthington: Yes sir. To prevent violation. And that the remedy, if they have any, is through the Secretary, and upon his refusal to grant relief then to proceed in an entirely different manner in the District Court to review that finding.

The Court: Then, under 608c (15) (B) it says: (The Court here reads section referred to).

Mr. Worthington: Under that section, I think Judge Crump could raise a constitutional question or any other question, that is, questions of law. But under this proceeding here I submit that Congress did not intend for those questions to be raised.

The Court: Of course, the Secretary can't pass on the questions of constitutionality.

Mr. Worthington: No.

The Court: That is out of the purview of his power.

Mr. Worthington: I think that section (6) simply is for the purpose of preventing violations of the Act, and nothing more, so that they will be confined to the remedy that Congress gave them in (15), (A) and (B). Otherwise, Congress would be giving a premium to violators of the Act. [198]

The Court: Have you any authorities that you would like to have me read?

Mr. Crump: I haven't collected them. I think I could get them together, but it will take me a little time. I can probably get them to you by noon tomorrow. But in answer to your question, we take the position that this section, which your Honor referred to that, "The several District Courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement," simply is a grant of power—not a limitation of power—but a grant of power to the court to enforce an order, which necessarily means of course a valid order.

The Court: Well, do we need an act of Congress to give us the power to enjoin the violation?

Mr. Crump: I am not so sure that you would. But, nevertheless, there might perhaps have been a question as to the authority of the United States

District Courts to enforce such a provision pending a ruling by the Secretary under (15), (A); in view of the fact (14) (608c) provides that there shall be no penalties for over-shipments while that application is pending. In other words, unless this provision were in there, we have the other provision that no penalties shall attach for violations of the order while an application for review is pending before the Secretary; I think there would be a very decided question whether the courts could restrain the violations of the order pending a ruling of the Secretary. But in any event, it seems to me that this simply is a provision that the District Courts have power to enforce, by way of injunction and order, which necessarily means a valid order, because if the order is not valid it is no order.

The Court: It says here, (608c) (15), "After such hearing the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law." [199]

Doesn't that carry with it the assumption that if there had been no petition for review it would become final, providing the order was in accordance with law?

Mr. Crump: Yes.

The Court: If you have a hearing on your complaint in equity for review and the Court upholds the Secretary, he can only uphold in the event the order was in conformity with law, can't he?

Mr. Crump: Yes. Suppose we didn't ask for any review at all, and this question came up; we didn't

have any review pending at all; certainly no order can be enforced unless it is a constitutional order, because the order cannot rise higher than its source.

Mr. Worthington: That being the case, the obvious conclusion is that it pays for these defendants to proceed in a disorderly manner and violate the order, whether they think it unconstitutional or not, and receive a premium for it, instead of proceeding as Congress stated they should proceed if they didn't think the order was proper.

The Court: If the order is void of its constitutional right it is a nullity.

Mr. Crump: Yes, and Congress didn't add anything to it by an Act of Congress.

The Court: No.

Mr. Crump: Congress can't add anything to it. If it violates the constitution it violates something that is ahead of and takes precedence over any Act of Congress.

The Court: Gentlemen, I am going to continue this matter until 2:00 p.m. Thursday, and if between now and tomorrow noon either side desires to submit any points and authorities, I would be glad to receive them. Now, any points and authorities that are submitted I want to be confined to this one point: That is the question as to whether or not, in such a proceeding as this, such [200] defendants as are involved in these cases can, at any stage of the proceedings, raise the constitutional question, and whether or not it is incumbent upon this court to determine that issue before granting an injunction.

Now, to my mind that is the gist of the action.

The trial was resumed Thursday, April 2, 1942, at which time the following proceedings were had.

After a short argument by Mr. Crump on behalf of the defendants represented by him, the Court announced its opinion, as follows:

OPINION OF THE COURT

I have a little memorandum made up so you will be clear as to the Court's position in the matter.

The Government in these consolidated cases is attempting to enjoin the over-shipment of lemons in violation of established prorate orders, issued in pursuance to Order No. 53, made by the Secretary of Agriculture.

The admissions in the answers, together with the stipulations of the parties, establish the fact that said defendants have violated the prorate order issued in pursuance to said Order, and it is clear that the Government is entitled to the relief sought, unless the Court should find in favor of the Defendants under their special defenses. These special defenses attempt to bring into issue the legality of said Order No. 53.

The defendants claim that said Order is arbitrary, unreasonable, unjust, and discriminating, and violative of their constitutional rights. The defendants have offered evidence in support of said affirmative defenses, and the sole question now before the Court is a determination of the admissibility of this [201] evidence.

I am of the opinion that such evidence is not admissible. The actions are brought pursuant to the provisions of Title 7, Section 608a(6) U. S. C. A., which provides as follows:

“The several District Courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore, or hereafter made, or issued pursuant to this chapter, in any proceeding now pending or hereafter brought in said Courts.”

I believe it was the intention of Congress under said provision to limit the jurisdiction of the District Court, to enforce and prevent violations of any order, regulation, or agreement made or issued pursuant to the Agricultural Adjustment Act. I believe the use of the word “specifically” has a special significance, and limits this Court’s jurisdiction to the precise things therein designated. I feel that said section is a limitation upon rather than a grant of power.

The Act provides for a complete administrative remedy. Section 608c (15) provides as follows:

“Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law, and praying for a modification thereof, or to be exempted therefrom. He shall

thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing the Secretary shall make a ruling upon the prayer [202] of such petition which shall be final, if in accordance with law.

“The District Courts of the United States (including the District Court of the United States for the District of Columbia) in any District in which such handler is an inhabitant, or has his principal place of business, are hereby vested with the jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within 20 days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the Court determines that such is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) To make such ruling as the Court shall determine to be in accordance with law, or (2) To take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this Subsection (15) shall not impede, hinder, or delay the United States, or the Secretary of Agriculture from obtaining relief pursuant to Section 608a(6) of this Title. Any proceedings brought pursuant to Section

608a(6) of this Title (except where brought by way of counterclaim in proceedings instituted pursuant to this Subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15).”

You will note that this section specifically provides [203]

“If the Court determines that such ruling is not in accordance with law.”

Well, of course, if it is violative of any constitutional right, it is not in accordance with law, and it seems to me that it is clear under that section that it is going to be incumbent upon the Court to determine the lawfulness of the Order.

The defendants have all filed their petitions with the Secretary of Agriculture in pursuance to such section. Some of the petitions have been dismissed, and bills in equity are now pending seeking a review of such rulings. The balance of said petitions are now pending before the Secretary of Agriculture.

It is a cardinal principle of administrative law, that the administrative remedy must be followed and judicial relief will not be granted before the prescribed administrative remedy has been exhausted.

I am satisfied the following authorities support my view: Federal Power Commission v. Metropolitan Edison Co., 304 U.S. 375; Myers v. Bethle-

hem Shipbuilding Corporation, 303 U.S. 41; Rochester Telephone Co. v. United States 307 U.S. 125 and United States v. Superior Court recently decided by the Supreme Court of the State of California. The exact designation of the citation I have not before me.

It further appears to me that the Act provides for an exclusive remedy of review, which excludes all other judicial intervention. (National Labor Relations Board v. Jones & McLaughlin, 301 U.S. 1).

If I am correct in my viewpoint, the legality of the Order can only be questioned in a District Court under the provisions of said Section 608c (15).

Such a ruling will not work an undue hardship upon the defendants inasmuch as they are now pursuing their administrative remedy, and when the matter is presented to the District Court, they [204] then can present their attacks on the lawfulness of said Order No. 53.

If the Court agrees with the contentions, any action taken pursuant to said Order will be abated. On the other hand, if the Court upholds the Secretary of Agriculture, said Order No. 53 will become final.

Let us for a moment analyze the contentions of the defendants. If their theory is to prevail, they can, in this action, in effect annul said Order No. 53. A judgment denying the Government injunctive relief would have that effect and said Defendants, with impunity could ignore their administra-

tive remedy and to so hold would in effect grant to the defendants judicial relief prior to the exhaustion of their administrative remedies.

Furthermore, such a holding would, in effect, permit this Court to try the issues presented to the Secretary of Agriculture, and any judgment by this Court would be a substitution of my opinion for that of the Secretary of Agriculture, which would be in direct conflict with the legislative intent.

I believe *Railroad Commission v. Rowan and Nichols Oil Company*, 310 U.S. 573—311 U.S. 570 support me in that contention.

It would also grant to said defendants an advantage not afforded to others. If the defendants had voluntarily complied with the order and then pursued their administrative remedy, they would be restricted to a judicial review as provided in said Section 608c(15), but as a reward for their non-compliance with the order they contend the legality of the Order may now be determined by this Court.

I do not feel any such discrimination should be made in favor of the wrong-doer. Familiar rules of equity should withhold this Court's favor in this respect.

Insofar as the defendants raising the issue that the Act does [205] not apply to second handlers, I adhere to my former rulings. I do not believe that the Act or the Order makes any such distinction. Any such holdings would allow a complete circumvention of the Act and the Order.

The thought I have in mind, gentlemen, is that the findings be limited to the facts of the Order and the non-compliance and the injunction prohibiting the violation of Order No. 53. I would have no objection to the findings in a case reflecting that the defendants are pursuing their administrative remedy and that, if the judgment in the administrative proceedings was in favor of the defendants, such judgment would, in effect, abate the order here, such final judgment.

I would like, Judge Crump, to have counsel see if they cannot agree on findings, and if you cannot agree, we will arrange for a conference for the purpose of thrashing out those things.

But it is not my intention, by granting this injunction, to preclude the defendants from raising every issue that they are entitled to raise in their review proceedings.

I look upon this proceeding of the Government as an interim proceeding in a way. That is, as I view the Act, those affected by it have their administrative remedy, but Congress realizing the delays that occur by reason of those petitions for hearing before the Secretary of Agriculture and then the Court proceedings, that there is going to be a great delay and that to enforce the Order pending such proceeding, it has provided for this one section that gives the District Court jurisdiction. It might have been an improvement in the Act if it had provided that a temporary restraining order would be issued which shall be held in abeyance until the administrative remedy had been exhausted, but I

look at this this way, and, as I have said, assume, Judge Crump, that your clients had voluntarily complied with this Order and still were dissatisfied and had filed their petition for review with the Secretary of Agriculture [206] and then their bill in equity in this Court upon refusal of the Secretary to grant you any relief: Now certainly you would have the right under such conditions to raise any point, particularly your point of constitutionality.

Now I don't believe that because Congress gave the District Court power to enforce the Order that it intended to give those that did not comply with the Order a broader right of review and a greater scope of judicial action than the man that complied with it, and certainly there is a method of reaching the legality of this Order and the Act itself provides definitely that when the ruling of the Secretary becomes final, it shall be final if in accordance with law.

Now, of course, it seems to me that that language, "If in accordance with law" might be considered as surplusage because any order he makes in violation of the law, there would be a way of reaching it, but I believe that it is primarily the problem of the Court that reviews the action of the Secretary of Agriculture.

The Government, under my statement, of course, is entitled to an injunction in these cases, and I shall expect them to expeditiously prepare the findings, serve them, and submit them to me and try to settle this in the next few days.

This concluded the proceedings at the trial in said consolidated cases. [207]

DEFENDANTS' EXHIBITS OFFERED AND
MARKED FOR IDENTIFICATION BUT
EXCLUDED FROM THE EVIDENCE BY
THE TRIAL COURT.

Defendants' Exhibits "A" to "K", both inclusive, offered in evidence by these appealing defendants and marked for identification, in connection with the offers of proof made by said defendants at the trial, as hereinbefore referred to in the "Proceedings at the Trial", (all of which were excluded by the Court), were and are in the words and figures following, to-wit: [208]

DEFENDANTS' EXHIBIT "A" FOR
IDENTIFICATION

November 19, 1941

To All Handlers of Lemons:

A copy of the Marketing Policy Statement as submitted to the Secretary of Agriculture on November 15, 1941, is hereby presented to you as required under Section 4 (a) of the Marketing Agreement:

"In presenting its Marketing Policy Statement for the ensuing year, Lemon Administrative Committee wishes to review, for your perusal, the operations of this program since the week commencing June 1, 1941 as same refers to weekly industry

shipments interstate, and weekly f.o.b. prices in contrast with comparable data for the previous year and the average for the three prior years:

Week Ending	Interstate Industry Shipments			Average F.O.B. Price		
	1941	1940 c a r s	3 Yr. Avge. 1938-1940	1941	1940	3-Yr. Avge 1938-1940
				dollars per box		
June 7	683	594	627	3.43	3.01	3.17
14	642	675	613	3.05	3.52	3.32
21	586	708	611	2.89	3.55	3.24
28	731	558	583	3.55	3.13	3.12
	<hr/> 2,642	<hr/> 2,535	<hr/> 2,434			
July 5	717	307	410	4.65	2.73	2.96
12	707	435	615	3.74	2.71	3.21
19	655	404	450	3.16	2.53	3.03
26	577	642	476	3.17	3.75	3.15
	<hr/> 2,656	<hr/> 1,788	<hr/> 1,951			
Aug. 2	705	716	519	4.04	6.17	4.00
9	705	404	417	4.75	4.22	3.49
16	677	377	374	3.97	3.55	3.42
23	397	368	328	2.91	3.27	3.48
30	268	288	321	2.32	2.86	3.17
	<hr/> 2,752	<hr/> 2,133	<hr/> 1,959			
Sept. 6	146	227	205	2.33	2.75	2.94
13	257	206	228	2.40	2.51	2.96
20	242	129	196	2.85	2.31	2.87
27	303	118	152	3.26	2.32	2.83
	<hr/> 948	<hr/> 680	<hr/> 779			
Oct. 4	256	191	163	3.40	2.57	2.71
11	251	230	195	3.13	2.81	2.81
18	245	208	175	3.22	2.83	2.83
25	277	200	183	3.11	2.60	2.90
	<hr/> 1,029	<hr/> 829	<hr/> 716			
Nov. 1	268	218	180	3.04	2.51	2.91
	<hr/> <hr/> 10,295	<hr/> <hr/> 8,183	<hr/> <hr/> 8,019			

As to the distribution of the crop during the same period, we offer also, the following performance record:

	Shipments June 1, 1941 to November 1, 1941, inc. Cars	Percentage Distribution to November 1, 1941
Interstate	10,295.02	50.92
Intrastate	1,089.33	5.39
Export	55.50	.27
By-Product	7,732.92	38.25
Eliminated	1,044.58	5.17
Total.....	20,217.35	100.00

[208-a]

The objectives of this Committee shall be directed toward attaining such results as are prescribed in the Marketing Agreement and Order with particular reference to so recommending the regulation of shipments, when necessary, that the returns to lemon growers will tend to approach parity, at the same time giving due consideration to the interests of the consumer.

Lemon Administrative Committee believes that the desired results may be obtained through regulation of shipments, giving careful consideration to the interrelationship of the primary factors which affect the price and income for lemons, namely; available market supply, consumer income, and weather conditions.

Further, the Committee will consider at all times the additional consumptive demand for lemons which may be created by increased sales effort on the part of the industry, through more intensive advertising and merchandising programs.

Approximately 9,200,000 boxes of fresh lemons were sold in the season just ended as compared with 7,807,000 boxes in 1940, and a three year average of 7,719,000 boxes. It is believed that the sale of this record volume of lemons was made possible by virtue of the following factors: A regulated flow of lemons to market, summer temperatures which were 2 degrees above normal, and an increase of 21 points in the index of non-agricultural income. Preliminary data on the average f.o.b. price received for packed and loose lemons during last season indicate a figure of about \$2.94 per box.

For the 1941-42 season it is estimated that, assuming normal summer temperatures (as compared with 1940-41 summer temperatures which were 2 degrees above normal) and a further rise of 13 points in the index of non-agricultural income, not less than 9,000,000 boxes of lemons may be sold in fresh fruit channels at a price approaching parity.

The official government forecast of the 1941-42 lemon crop, as of November 1, 1941 indicates production of 14,580,000 boxes. If we may assume this estimate to be reasonably accurate, the industry is faced with a crop considerably in excess of the quantity which it is felt can be marketed in fresh fruit channels during said year at reasonable prices.

Based upon this early season estimate, the following utilization schedule for the 1941-42 lemon crop is indicated:

	1,000 Boxes	Percent
Tree crop	14,580	100.0
Dom. and Canadian fresh shipts.	8,970	61.5
Exports other than Canada.....	30	.2
By-Products and Cullage.....	5,580	38.3

In conclusion, it may be stated that this Committee will endeavor to develop and maintain a shipping program which, under normal conditions will approach parity for the season as prescribed by the Agricultural Marketing Agreement Act, and which also recognizes fairness and adequate supplies to the consumers of lemons.”

Yours very truly,

LEMON ADMINISTRATIVE
COMMITTEE

By R. L. MacRAE

Assistant Secretary. [208-b]

DEFENDANTS' EXHIBIT B

EFFECT OF MARKETING POLICIES ON RETURNS OF
10 ACRE LEMON GROVE

10 Acre Grove

4330 Field Boxes (average yield on 5 year basis) @ 50#
per Field Box
-216 5% eliminated

4114 Field Boxes

½ of Crop Packed and Shipped:

1353 packed boxes @ 76# to packed box
Delivered Price\$ 4.50 \$ 6,088.50
Costs 3.34 4,519.02

Net Returns \$ 1,569.48

Effect of Marketing Policies on Returns of 10 Acre Lemon
Grove—(Continued)

½ of Crop Diverted to By-Products:

2057 field boxes (based on \$20 per ton) @ 50c
\$ 1,028.50

Costs:

cultivation\$.542
picking and
hauling242
packing house
costs200

Total Costs984 \$ 2,015.86

Net Loss \$ -987.36

Total \$ 582.12

Cost of eliminated Fruit

216 Field Boxes @ \$.98..... \$ -211.68

Net for Crop..... \$ 370.44

10 Acre Grove

4330 Field Boxes (average yield on 5 year basis) @ 50#
per Field Box.

-216 5% eliminated

4114 Field Boxes

¾ of Crop Packed and Shipped:

2030 packed boxes @ 76# to packed box

Delivered Price\$ 4.10 \$ 8,323.00

Costs 3.34 -6,780.20

Net Returns \$ 1,542.80

¼ of Crop Diverted to By-Products:

1028 Field Boxes @ 50c (based on \$20 per ton)

\$ 514.00

Costs\$.98 1005.48

Net Loss -491.48

Total \$ 1,051.32

Effect of Marketing Policies on Returns of 10 Acre Lemon
Grove—(Continued)

Cost of eliminated Fruit:		
216 Field Boxes @ \$.98.....		211.68
Net Income for Crop.....		\$ 839.64
		[208-c]
4330 Field Boxes (average yield on 5 year basis) @ 50# per Field Box		
-216 5% eliminated		
4114 Field Boxes		
90% of Crop Packed and Shipped:		
2436 packed boxes @ 76# per packed box		
Delivered Price\$ 4.00	\$ 9,744.00	
Costs	3.34	8,136.24
Net Returns		\$ 1,607.76
10% of Crop Diverted to By-Products:		
411 field boxes @ \$.50 (based on \$20 per Ton)		
	\$ 205.50	
Costs	\$.98	402.78
Loss on Crop		-197.28
Total Returns		\$ 1,410.48
Cost of Eliminated Fruit of		
216 Field Boxes @ \$.98 per box		211.68
Net Income for Crop.....		\$ 1,198.80

CALIFORNIA CITRUS LEAGUE FIGURES

	* * * *	* * * *
	Packed Box	Field Box
Cultural .....	.824	.542
Pick .....	.321	.211
Haul .....	.047	.031
Packing .....	.782	.200
Selling .....	.168	x
Freight	1.200	x
	\$3.342	\$.984

California Citrus League Figures—(Continued)

Cultural Costs per 10 acres.....\$2,347.20

Field boxes to carry cost.

4330 avg. cost per fb.. .542

Costs converted to packed box:

50 lb. loose—76 lb. packed=.824

per packed box.

By-Products:

\$20.00 per Ton, — 40 Field Boxes

per ton @ \$.50 per Field Box.

[208-d]

DEFENDANTS' EXHIBIT C

LEMON SHIPMENTS

June 1, 1941, to November 1, 1941

DISTRIBUTION	INDUSTRY		* * *		M.O.D. (ACTUAL)		M.O.D. (WOULD HAVE) *	
	Cars	Percent	Cars	Percent	Cars	Percent	Cars	Percent
Interstate	10,295.02	50.92	594.65	55.37	505.65	47.08		
Intrastate	1,089.33	5.39	83.49	7.77	98.99	9.22		
Export	55.50	.27	1.53	0.14	1.81	0.17		
By-Products	7,732.92	38.25	370.13	34.47	438.84	40.86		
Eliminated	1,044.58	5.17	24.20	2.25	28.71	2.67		
Total.....	20,217.35	100.00	1,074.00	100.00	1,074.00	100.00		

*If M.O.D. had not overshipped, based on the proportions M.O.D. Moved in non-prorated channels, M.O.D. movement would have been as shown.

(Source of date: Lemon Administrative Committee)

[208-e]

Defendants' Exhibit D—(Continued)

SUMMARY OF COPY OF SHIPPERS' PERFORMANCE RECORD

Handler: Mutual Orange Distributors

Reg. #	Date Week Ending	Certificate of Allotment		Certificate of Adj. Allotment		Total Packed Boxes		Over Shipped Pkd. Boxes		Under Shipped Pkd. Bxs.		Forfeits Pkd. Bxs.		By-Products Packed Boxes		Amount of Violation Pkd. Bxs.	
		Boxes	Cars	Boxes	Cars	Boxes	Cars	Boxes	Cars	Boxes	Cars	Boxes	Cars	Boxes	Cars	Boxes	Cars
1.	6-7-41	12,738	31.37	12,738	31.37	22,763	56.1	10,025						5,346	13.2	8,460	20.8
2.	6-14	11,269	27.76	9,704	23.90	24,509	60.4	14,805						7,114	17.5	13,828	34.1
3.	6-21	9,754	24.02	8,784	21.64	17,449	43.0	8,665						6,905	17.0	6,466	15.9
4.	6-28	12,414	30.58	10,215	25.16	15,870	39.1	5,655						6,721	16.6	5,325	13.1
5.	7-5	11,631	28.65	11,294	27.82	13,556	33.4	2,262						7,201	17.7	2,168	5.3
6.	7-12	11,631	28.64	11,868	29.23	11,947	29.4	79				105		7,961	19.6		
7.	7-19	10,625	26.17	10,154	25.01	10,234	25.2	80				52		4,977	12.3		
8.	7-26	9,399	23.15	9,223	22.72	8,989	22.1			234		101		9,846	24.3		
9.	8-2	12,911	31.80	13,041	32.12	13,084	32.2	43				112		8,047	19.8		
10.	8-9	12,911	31.80	14,046	34.60	14,514	35.7	468				406		5,779	14.2		
11.	8-16	14,992	36.93	14,258	35.12	13,579	33.4			679		10		4,065	10.0		
12.	8-23	8,567	21.10	9,058	22.31	9,126	22.5	68				9		3,939	9.7		
13.	8-30	5,752	14.17	5,758	14.18	6,128	15.1	370				28		6,565	16.2		
14.	9-6	3,451	8.50	2,871	7.07	2,483	6.1			388		83		7,164	17.6		
15.	9-13	6,465	15.92	6,628	16.33	7,003	17.2	375				18		8,107	20.0		
16.	9-20	6,465	15.92	6,065	14.94	6,350	15.6	285				43		8,576	21.1		
17.	9-27	7,920	19.51	7,258	17.88	7,499	18.5	241				27		6,912	17.0		
18.	10-4	6,601	16.26	6,125	15.09	7,561	18.6	1,436				4		10,538	26.0		

vs. United States of America

Defendants' Exhibit D—(Continued)
Summary of Copy of Shippers' Performance Record—(Continued)

Handler:	Date Week Reg. # Ending	Certificate of Allotment		Certificate of Adj. Allotment		Total Packed		Over Shipped Pk'd. Boxes	Under Shipped		Forfeits Pk'd. Bxs.	By-Products Packed		Amount of Violation	
		Boxes	Cars	Boxes	Cars	Boxes	Cars		Boxes	Cars		Boxes	Cars	Pkd. Bxs.	Boxes
	19. 10-11	6,578	16.20	5,339	13.15	5,594	13.8	255			7	4,646	11.4		
	20. 10-18	6,578	16.20	6,391	15.74	6,706	16.5	315			10	9,625	23.7		
	21. 10-25	7,595	18.71	8,366	20.60	8,876	21.9	510			2	5,716	14.1		
	22. 11-2	7,595	18.71	7,904	19.46	7,609	18.7		295			4,522	11.1		
Totals.....		203,842	502.07	197,088	485.44	241,429	594.5	45,937	1,596	1,017		150,272	370.1	36,247	89.2
Summary:	Interstate			241,429	55.37%										
	Interstate			33,900	7.77%										
	Exports			625	.14%										
	By-Products			150,272	34.46%										
Eliminated				9,826	2.26%										
Total:				436,052	100.00%										

Defendants' Exhibit D—(Continued)
COPY OF SHIPPERS' PERFORMANCE RECORD

Handler: Whittier Mutual Orange & Lemon Association

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits# Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-7-41	522	522	586	64			
2.	6-14	462	406	406				
3.	6-21	389	381	1,408	1,027			-621
4.	6-28	495	89	964	875			-875
5.	7-5	421	421			421		
6.	7-12	421	842	842				
7.	7-19	354	354	406	52			
8.	7-26	313					21	
9.	8-2	403	664	550		114	388	
10.	8-9	404	518	518			12	
11.	8-16	477	477	403		74	251	
12.	8-23	273	402	397		5	5 # 263	
13.	8-30	166	111			111		
14.	9-6	100	111	104		7	7 # 171	
15.	9-13	188	200	200				
16.	9-20	188	276	276				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Whittier Mutual Orange & Lemon Association—(Continued)									
Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits# Pkd. Bxs.	Amount of Violation Pkd. Bxs.	
17.	9-27	214	214	406	192		1,159		
18.	10-4	179	-13				62		
19.	10-11	140	127	127			98		
20.	10-18	140	140	406	266		181		
21.	10-25	121	-145						
22.	11-1	121	-24						
Totals.....		6,491	6,076	7,999	2,476	732	12 # 2,872	1,496	
Summary:		Interstate	7,999	69.45%					
		Interstate	148	1.29%					
		Exports	158	1.37%					
		By-Products	2,872	24.94%					
		Eliminated	340	2.95%					
Total:			11,517	100.00%					

Defendants' Exhibit D—(Continued)
Copy of Shippers' Performance Record—(Continued)

Handler: Index Mutual Association

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-7-41	726	726	949	223		845	
2.	6-14	642	411	406		5	113	
3.	6-21	561	574	625	51		259	
4.	6-28	713	662	2,388	1,726		139	1,726
5.	7-5	667	667	1,014	347		254	
6.	7-12	667	320	274		46		
7.	7-19	496	542	496		46	46*	
8.	7-26	439	700	822	122			
9.	8-2	517	134			134	153	
10.	8-9	517	651	950	299		65	
11.	8-16	537	238	144		94		
12.	8-23	307	401	525	124		56	
13.	8-30	204	80			80	178	
14.	9-6	122	202	202			103	
15.	9-13	230	230	476	246		268	
16.	9-20	230	-16				314	
17.	9-27	280	264	256		8	370	

vs. United States of America

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Index Mutual Association—(Continued)

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
18.	10-4	233	241	604	363		321	
19.	10-11	229	-134				351	
20.	10-18	229	95	95			225	
21.	10-25	239	239	639	400		486	
22.	11-1	239					177	
Totals.....		9,024	7,227	10,865	3,901	413	46*	1,726
Summary:		Interstate	10,865	49.29%				
		Interstate	4,764	21.61%				
		Exports	200	0.91%				
		By-Products	4,677	21.22%				
		Eliminated	1,535	6.97%				
Total		22,041		100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Glendora Co-Operative Citrus Asso.

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-07-41	288	288	1,070	782		341	376
2.	6-14	255	-151	786	786		320	786
3.	6-21	217	66	1,005	939		292	533
4.	6-28	276	-130	0			205	
5.	7-05	200	70	0		70		
6.	7-12	200	270	236		34	34*	
7.	7-19	142	142	67		75		
8.	7-26	126	201	0		201	75*	79
9.	8-02	140	266	291	25		67	67
10.	8-09	139	114	104		10	67	
11.	8-16	128	138	104		34	170	10*
12.	8-23	73	42	41		1	78	1*
13.	8-30	77	132	104		28	90	28*
14.	9-06	46	46	48	2		60	
15.	9-13	120	118	104		14		
16.	9-20	120	134	104		30		14*

vs. United States of America

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Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Reg.#	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
Handler: Glendora Co-Operative Citrus Asso.—(Continued)								
17.	9-27	158	174	174	0	0	112	
18.	10-04	132	132	128		4	266	
19.	10-11	140	144	128		16	4* 283	
20.	10-18	140	152	144		8	8 256	
21.	10-25	188	188	192	4		162	
22.	11-01	188	184	128		56	132	
Totals	.....	3,493	2,720	4,958	2,538	581	174* 2,980	1,695

Summary:	Interstate	4,958	51.98%
	Intrastate	1,006	10.55%
	Exports	245	2.57%
	By-Products	2,980	31.24%
	Eliminated	350	3.66%

Total 9,539 100.00%

Defendants' Exhibit D—(Continued)
 Copy of Shippers' Performance Record—(Continued)
 Handler: Upland Orchards

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-07-41	124	124	1,724	1,600		264	1,194
2.	6-14	110	-296	2,072	2,072		631	2,072
3.	6-21	65	-231	0				
4.	6-28	81	-150	0			12	
5	7-05	53	-97	0				
6.	7-12	53	0	0				
7.	7-19	55	55	0		55	190	
8.	7-26	49	60	406	346			
9.	8-02	88	-258	0				
10.	8-09	88	-170	0				
11.	8-16	85	-85	0				
12.	8-23	49	-36	0			39	
13.	8-30	34	-2	0				
14.	9-06	20	18	0		18		
15.	9-13	26	44	0		44		18*
16.	9-20	26	52	0		52		26*

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Upland Orchards—(Continued)

Reg.#	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
17.	9-27	4	30			30	26*	
18.	10-04	3	7			7	4*	
19.	10-11	2	5			5	3*	
20.	10-18	2	4			4	2*	
21.	10-25						2*	
Totals		1,017	-926	4,202	4,018	215	81	3,266
Summary:		Interstate	4,202	68.46%				
		Intrastate	788	12.84%				
		Exports	12	—				
		By-Products	1,136	18.70%				
		Eliminated	x	x				
Total			6,138	100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Ventura County Orange & Lemon Asso.

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-07-41	3,251	3,251	3,394	143		826	
2.	6-14	2,876	2,733	6,293	3,560		1,551	3,560
3.	6-21	2,802	2,802	5,278	2,476		2,203	2,070
4.	6-28	3,567	3,161	2,880		281	3,884	
5.	7-05	3,300	3,581	3,654	73		3,882	
6.	7-12	3,300	3,227	3,050		177	1,820	
7.	7-19	3,088	3,265	3,293	28		689	
8.	7-26	2,731	2,703	2,626		77	3,340	
9.	8-02	3,729	1,370	1,464	94		1,610	
10.	8-09	3,729	4,910	4,504		406	1,300	
11.	8-16	4,704	4,647	4,822	175		717	
12.	8-23	2,688	3,731	3,700		31	695	
13.	8-30	1,638	1,669	1,982	313		2,135	
14.	9-06	983	670	264		406	270	
15.	9-13	1,809	1,899	1,899	0	0	1,131	
16.	9-20	1,809	2,125	2,216	91		1,587	

vs. United States of America

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Ventura County Orange & Lemon Asso.—(Continued)

Reg.#	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
17.	9-27	2,325	2,234	2,182		52		
18.	10-04	1,938	1,990	2,245	255		2,763	
19.	10-11	1,877	1,624	1,624	0	0	1,108	
20.	10-18	1,877	2,281	2,293	12		1,542	
21.	10-25	2,131	2,540	2,540			1,819	
22.	11-01	2,131	2,550	2,550			867	
Totals	.....	58,283	58,963	64,753	7,220	1,430	406*	5,630
Summary:	Interstate		64,753	53.26%				
	Intrastate		20,348	16.74%				
	Exports		x	x				
	By-Products		35,739	29.40%				
	Eliminated		739	.60%				
Total	.....		121,579	100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Orange Mutual Citrus Association

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits [#] Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-7-41	248	248	606	358		76	
2.	6-14	219	-139	0			160	
3.	6-21	214	75	406	331			
4.	6-28	274	-57	0			439	
5.	7-5	390	333	0		333	738	
6.	7-12	390	723	1,093	370		397	
7.	7-19	391	21	0		21		
8.	7-26	346	367	0		367	177	21#
9.	8-2	469	815	981	166			
10.	8-9	469	812	812	0	0	917	
11.	8-16	549	746	746	0	0	157	
12.	8-23	313	129	0	0	129	190	
13.	8-30	199	328	328	0	0	210	
14.	9-6	119	20	0		20	671	
15.	9-13	240	158	158	0	0	336	
16.	9-20	240	50	0		50		

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Orange Mutual Citrus Association—(Continued)		Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits# Pkd. Bxs.	Amount of Violation Pkd. Bxs.
Reg. #									
17.		9-27	292	211	566	355		493	
18.		10-4	244	-111	0			344	
19.		10-11	281	406	406	0	0	474	
20.		10-18	281	281			281	1,175	
21.		10-25	311	549	549				
22.		11-1	311	311			311	620	
Totals		6,790		6,276	6,651	1,580	1,512	7,574	21#
Summary:									
Interstate				6,651	39.08%				
Intrastate				1,559	9.16%				
Exports									
By-Products				7,574	44.50%				
Eliminated				1,236	7.26%				
Totals				17,020	100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: La Verne Co-Operative Citrus Association

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-07-41	3,557	3,557	6,846	3,289		1,221	2,883
2.	6-14	3,147	2,741	7,044	4,303		1,119	4,303
3.	6-21	2,282	2,289	2,695	406		1,639	
4.	6-28	2,904	2,498	2,482		16		
5.	7-05	2,683	2,692	2,947	255		886	
6.	7-12	2,683	2,428	2,233		195	2,833	
7.	7-19	2,391	2,586	2,973	387		2,238	
8.	7-26	2,115	1,728	1,724		4	2,116	
9.	8-02	2,927	5,367	5,260		107	2,055	
10.	8-09	2,927	2,436	2,664	228		443	
11.	8-16	3,180	2,952	2,140		812	726	
12.	8-23	1,817	1,411	1,411	0	0	1,322	
13.	8-30	1,232	1,318	1,318	0	0	1,690	
14.	9-06	739	653	1,053	400		2,164	
15.	9-13	1,467	1,067	918		149	4,234	
16.	9-20	1,467	1,616	1,724	108		1,626	

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
17.	9-27	1,933	1,643	1,643	0	0	1,709	
18.	10-04	1,611	1,525	1,928	403		2,924	
19.	10-11	1,741	1,105	1,004		101	1,235	
20.	10-18	1,741	1,661	1,995	334		2,300	
21.	10-25	2,184	1,850	1,799		51	513	
22.	11-01	2,184	2,641	2,660	19		345	
Totals	.....	48,912	47,764	56,461	10,132	1,435	107*	7,186
Summary:	Interstate		56,461	56.93%				
	Intrastate		1,738	1.75%				
	Exports		10	—				
	By-Products		35,338	35.64%				
	Eliminated		5,626	5.68%				
Total	.....		99,173	100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Libbey Fruit Packing Company

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
21.	10-25	83	3	15	12			
22.	11-01	83	11	9		2		
Totals	.....	166	14	24	12	2		
Summary:	Interstate		24	42.86%				
	Intrastate		32	57.14%				
	By-Products							
	Exports							
	Eliminated							
Total	.....		56	100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Chula Vista Lemon Association

Reg #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-07-41	2,673	2,673	7,086	4,413		0	4,007
2.	6-14	2,365	1,959	5,066	3,107		1,545	3,107
3.	6-21	2,206	2,206	5,854	3,648		1,723	3,242
4.	6-28	2,808	2,402	5,126	2,724		1,230	2,724
5.	7-05	2,555	2,555	5,129	2,574		974	2,168
6.	7-12	2,555	2,436	2,371		65	1,821	
7.	7-19	2,568	2,281	2,593	312		1,437	
8.	7-26	2,271	1,959	1,787		172	3,405	
9.	8-02	3,365	3,537	3,726	189		3,118	
10.	8-09	3,365	3,176	3,078		98	2,378	
11.	8-16	3,911	4,009	4,408	399		1,673	
12.	8-23	2,235	1,836	1,834		2	877	
13.	8-30	1,638	1,640	1,990	350		1,799	
14.	9-06	983	812	812	0	0	2,855	
15.	9-13	1,845	2,030	2,030	0	0	1,351	
16.	9-20	1,845	1,624	2,030	406		4,546	

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
17.	9-27	2,102	1,675	1,460		215	2,387	
18.	10-04	1,752	1,845	2,250	405		3,515	
19.	10-11	1,702	1,493	1,493	0	0	639	
20.	10-18	1,702	1,554	1,773	219		3,946	
21.	10-25	1,856	2,330	2,330			2,223	
22.	11-01	1,856	1,856	2,262	406		2,381	
Totals		50,158	47,888	66,488	19,152	552	65* 45,823	15,248
Summary:								
Interstate			66,488	57.74%				
Intrastate			2,845	2.47%				
Exports			—	—				
By-Products			45,823	39.79%				
Eliminated			—	—				
Total			115,160	100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Handler: Orange County Citrus Growers, Inc.

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
1.	6-07-41							
2.	6-14							
3.	6-21							
4.	6-28							
5.	7-05	6	6	0		6		
6.	7-12	6	12	0		12	6*	
7.	7-19	5	11	0		11	6*	
8.	7-26	5	10	0		10	5*	31
9.	8-02	3	5	0		5	5*	
10.	8-09	3	0	0				
11.	8-16							
12.	8-23		3			3	3*	
13.	8-30							
14.	9-06							
15.	9-13		3			3		
16.	9-20		3			3	3*	

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
17.	9-27							
18.	10-04							
19.	10-11							
20.	10-18							
21.	10-25							
Totals	28		53	0		53	28*	31
Summary:	Interstate							
	Intrastate		71	69.61%				
	Exports							
	By-Products		31	30.39%				
	Eliminated							
Total			102	100.00%				

Defendants' Exhibit D—(Continued)

Copy of Shippers' Performance Record—(Continued)

Reg. #	Week Ending Date	Certificate of Allotment Packed Boxes	Certificate of Adj. Allotment Packed Boxes	Total Packed Boxes	Over Shipped Pkd. Bxs.	Under Shipped Pkd. Bxs.	By-Products Forfeits* Pkd. Bxs.	Amount of Violation Pkd. Bxs.
17.	9-27-41	612	813	812		1	1*	682
18.	10-04-41	509	509	406		103		343
19.	10-11-41	466	569	812	243			458
20.	10-18-41	466	223			223		
21.	10-25-41	482	812	812				513
22.	11-01-41	482	375			375		
Totals	.....	19,480	21,033	19,028	2,002	4,007	77*	14,102
Summary:	Interstate		19,028	56.42%				
	Intrastate		597	1.77%				
	Exports		—					
	By-Products		14,102	41.81%				
	Eliminated		—					
Total	.....		33,727	100.00%				

DEFENDANT'S EXHIBIT "E" FOR IDENTIFICATION

COMPARATIVE LEMON SHIPMENTS

Season	MOD Shipments		(From Fruit World) Total Calif	Percentage Shipped by MOD
	Packed Boxes	Cars	Cars	
1929-30	160,500	461.2	13,228	3.5%
1930-31	290,464½	834.7	15,922	5.2
1931-32	308,606	886.8	13,602	6.5
1932-33	271,376	779.8	13,974	5.6
1933-34	270,983	778.7	16,177	4.8
1934-35	387,014	1112.1	18,240	6.1
1935-36	328,764	944.7	17,775	5.3
1936-37	204,299	503.2	14,096	3.6
1937-38	392,219	966.0	16,103	6.0
1938-39	463,186½	1140.9	17,471	6.5
1939-40	510,722½	1257.9	16,781	7.5
1940-41	659,292½	1623.9	20,001	8.1

Note: Car basis 348 boxes previous to 1936-37 season.

Car basis 406 boxes for 1936-37 season and thereafter.

MUTUAL ORANGE DISTRIBUTORS

By
Sales Manager

DEFENDANT'S EXHIBIT "F" FOR IDENTIFICATION

PACKED LEMON SHIPMENTS

Month	Season 1939-40			Season 1940-41		
	MOD Carlot	Total Calif. (Fruit World)	Pct. Shipped	MOD Carlot	Total Calif. (Fruit World)	Pct. Shipped
November:	25	814	3.1	48	995	4.8
December:	40	880	4.5	45	838	5.4
January:	45½	968	4.8	128	1448	8.8
February:	91	1221	7.5	107	910	11.6
March:	100½	1027	9.8	160	1204	13.5
April:	152	1499	10.3	254	1701	14.9
May:	187	2212	8.5	298	2762	10.8
June:	225	2601	8.6	204	2966	6.9
July:	171	2178	7.9	122	2813	4.3
August:	92	1774	5.2	110	2251	4.9
September:	54	709	7.6	66	984	6.7
October:	73	955	7.7	82	1129	7.2
Totals:	1258	16,838*	7.7	1624	20,001	8.1

Note: Discrepancy between Fruit World total of 16,781 and total by month as above.

DEFENDANTS' EXHIBIT "G" FOR IDENTIFICATION

OPERATION OF LEMON PRORATE AS IT AFFECTED M. O. D.

June 1 to August 31, 1941

Allotments and Shipments

(June 1 to August 30, inclusive)

Certificates of Adjusted Allotments.....	345.1
Actual Shipments	448.9
Violation (all within first five weeks of operation of prorate)	89.2
Forfeitures	2.0
Diverted to by-products	31%

Operation of Lemon Prorate as It Affected M. O. D.—(Continued)

Number of Markets in Which Lemons Sold:

June 1 to August 30, inclusive.....114 markets

The most sold in any one market in one week.... 5 cars

Orders Unable Fill:

Actual orders placed with packing houses which they were unable to fill—June 1 to August 30, 1941.

A. Standing orders	84 cars
B. Individual orders	17 cars
C. Standing orders received from regular customers which were not placed with any particular packing house but offered to various houses from time to time and not accepted due to inability to ship.....	68 cars
D. Individual orders received from regular customers which were not placed with packing house due to inability to ship.....	88 cars
	257 cars

Note: While a few cars were rolled some weeks without orders, this was due to the fact that after filling orders, certain sizes and grades remained which did not fit any orders received. Some of these cars were sold at auction.

The actual percentage of our total lemon sales at auction June 1 to August 30 was.....	4%
Total industry lemon shipments (June 1—August 30, inclusive) were 8032 cars; total lemons sold auction that period 4013 cars—percentage sold at auction for industry	50%

EXPLANATION OF ITEM D ON EXHIBIT "G"

Lemon Orders Received But Not Placed With Packing Houses Account No Prorate Available

Place	June	July	August	Total
Albany, N. Y.		1		1
Altoona, Pa.	1			1
Atlanta, Ga. (Nall).....	2	6		8
Austin, Tex.		1		1

Explanation of Item D on Exhibit "G"—
(Continued)

Place	June	July	August	Total
Birmingham, Ala. (Aeco)....	1	2		3
Brunton (Gold Banner, Redlands)		1		1
Buffalo, N. Y.....	1			1
Charlotte, N. C.....		1		1
Cleveland, Ohio	1		1	2
Clovis, N. M.....	1			1
Columbia, S. C.....	3	2	2	7
Dallas, Tex.	2	2		4
Denver, Colo.	1	1		2
El Paso, Tex.		1		1
Houston, Tex.	1	1		2
Indianapolis, Ind.	5	2	2	9
Kansas City, Mo. (Aeco)....		1	1	2
Kansas City, Mo. (MOD)....	2	1		3
Jacksonville, Fla.	1			1
Milwaukee, Wis.	2			2
Minneapolis, Minn.		1		1
Mobile, Ala. (Hoyle).....		1		1
Mobile, Ala. (Aeco).....				0
Nashville, Tenn. (Smith)....	3	2		5
New Orleans, La. (Lally)....	3	4		7
Oklahoma City, Okla.....	1	2		3
Portland, Ore.		1		1
Safeway, Los Angeles		2		2
Salisbury, N. C.....	1			1
Salt Lake City, Utah.....			1	1
San Antonio, Tex.....		5		5
Seattle, Wn.		1		1
Sioux City, Ia.....		1		1
St. Louis, Mo.....	1			1
Toronto, Ont.	1			1
Tulsa, Okla.	1	1		2
Wesco Foods		2		2
Washington, D. C.....		1		1
	35	46	7	88

DEFENDANT'S EXHIBIT "H" FOR IDENTIFICATION

FIELD BOX AVERAGE F. O. B. PACKING HOUSE (Average to the Grower)

	1940	1941
Pool 1—Dec., Jan. and Feb...	\$.79967	\$.50952
Pool 2—Mar., Apr. and May..	1.084	.63562

STORAGE PERIODS

September 1939	27.89 cars
“ 1940	32.89 “
“ 1941	77.89 “

DEFENDANTS' EXHIBIT "I" FOR IDENTIFICATION

PERCENTAGE OF BY-PRODUCTS FRUIT 1941 Pool 2 and 1941 Pool 3

Pool 2 March, April and May			Pool 3 June, July and August		
1940-41 Pool 3			1940-41 Pool 2		
	Boxes	Percentage of Field Boxes		Boxes	Percentage of Field Boxes
Washer Letts	475	.44%		382	.18%
Washer Culls	6,471	5.98		6,031	2.86
Washer Standards	1,524	1.41		4,505	2.14
Grader Letts	87	.08		100	.05
Grader Culls	2,657	2.45		5,314	2.52
Grader Standards	12,123	11.21		14,359	6.81
Black Buttons	3,009	2.78		923	1.42
Contacts	2,662	2.46		1,277	.60
Total	29,008	26.81%		32,891	16.58%
Total Field Boxes	108,199			210,952	

DEFENDANTS' EXHIBIT "J" FOR IDENTIFICATION

GLENDDORA COOPERATIVE CITRUS ASSOCIATION

Packed Box Shipments—Prepared from Pool Shipping Records

	Whole Year Nov. 1st 1940 to Nov. 1st, 1941		Before pro-rate Nov. 1st 1940 to May 31st 1941		After pro-rate June 1st 1941 to Nov. 1st, 1941	
	Boxes	Percent	Boxes	Percent	Boxes	Percent
Interstate	22,802	61.5	16,412	63.2	6,390	57.6
Intrastate	2,918	7.8	1,544	5.95	1,374	12.4
By-Products	10,153	27.1	7,300	28.1	2,853	25.72
Eliminated	1,167	3.1	694	2.67	473	4.27
Total	37,040	99.5	25,950	99.92	11,090	99.99
Total field boxes received, converted to packed boxes season Nov. 1, 1940 to Oct. 31st, 1941.....	54,069.....37,092					
Total packed boxes disposed of in fresh form and to by-products.....	35,873					
Shrinkage and decay.....	1,219					

DEFENDANTS' EXHIBIT "K" FOR IDENTIFICATION

WHITTIER MUTUAL ORANGE & LEMON ASSN.

Packed Box Shipments Prepared from Pool Shipping Records

	Whole Year Nov. 1st 1940 to Nov. 1st, 1941		Before pro-rate Nov. 1st 1940 to May 31st 1941		After pro-rate June 1st 1941 to Nov. 1st, 1941	
	Boxes	Percent	Boxes	Percent	Boxes	Percent
Interstate	28,868	62.4	20,532	65.8	8,336	55.2
Intrastate	4,091	8.8	3,532	11.3	559	3.7
By-Products	11,092	23.9	6,243	20.0	4,850	32.1
Eliminated	2,236	4.9	881	2.9	1,355	9.0
Total	46,287	100%	31,187	100%	15,100	100%
Total field boxes received, converted to packed boxes season Nov. 1st 1940 to Oct. 31st 1941.....	44,198					
Total packed boxes disposed of in fresh fruit form and to By-Products	44,051					
Shrinkage and Decay.....	4,472					

[Title of District Court and Said Consolidated Cause.]

STATEMENT OF POINTS ON WHICH APPELLANTS, AND EACH OF THEM, INTEND TO RELY ON THE APPEAL

Come now the defendants LaVerne Cooperative Citrus Association, a corporation, Glendora Cooperative Citrus Association, a corporation, Ventura County Orange and Lemon Association, a corporation, Whittier Mutual Orange and Lemon Association, a corporation, Index Mutual Association, a corporation, and Chula Vista Mutual Lemon Association, a corporation organized and existing under the laws of California, in the above consolidated cases, and as Appellants therein, and pursuant to the provisions of Rule 76 of the Rules of Civil Procedure, state that the points on which they intend to rely on their appeals to the United States Circuit Court of Appeals are as follows:

1. The Order of the Secretary of Agriculture, known and designated as Order No. 53 "Order Regulating The Handling of Lemons In The States of California And Arizona", is, on its face, violative [210] of the Fifth Amendment of the Constitution of the United States, in this, that it deprives these appealing defendants herein, and each of them, of their property without due process of law.

2. Said Order No. 53 is, in its practical application and administration, violative of the Fifth Amendment of the Constitution of the United

States, in this, that it deprives these appealing defendants herein, and each of them, of their property without due process of law.

3. Said Order No. 53, both on its face and in its practical application and administration, is unjust, and discriminatory against these appealing defendants, and each of them, and is confiscatory of the property and business of them, and each of them.

4. The Trial Court erred in

(a) Holding that said Order No. 53 and the actions and conduct of the Secretary of Agriculture, and his agents, (in particular the Lemon Administrative Committee) in the application and administration of said Order were, in these injunction proceedings, conclusively presumed to be constitutional and valid, and that these appealing defendants, and each of them, had no right to question the constitutionality or validity of said Order or said actions or conduct.

(b) In precluding and preventing these appealing defendants, and each of them, from introducing evidence to prove or establish the facts alleged in their respective answers, and especially in the separate defenses therein set forth.

(c) In precluding and preventing these appealing defendants, and each of them, from introducing the testimony and evidence specifically detailed in the several offers of proof made by these appealing defendants at the trial.

(d) In denying the motion of these appealing

defendants, and each of them, for a discovery and inspection of certain documents and papers in the possession and control of the Secretary of [211] Agriculture under Rule 34 of the Rules of Civil Procedure.

5. The evidence received by the Trial Court, the Findings of Fact made by the Trial Court, and the law applicable to said evidence and Findings are insufficient to and do not support the following designated Conclusions of Law of said Trial Court.

(a) Conclusion No. V., to the effect that said Order No. 53 is applicable to all handlers of lemons grown in California and Arizona shipped in interstate commerce after April 10, 1941.

(b) Conclusion No. VI., to the effect that, in so far as this particular form of action is concerned, it is conclusively presumed that the establishment of the Lemon Administrative Committee is in accordance with law, and valid, and that said Committee has, at all times, legally exercised only the powers and performed the duties given and required by law.

(c) Conclusion No. VII., to the effect that the pro rate bases issued to each of the defendants herein are, in so far as this particular form of action is concerned, conclusively presumed to have been regularly made and are valid.

(d) Conclusion No. VIII., to the effect that the allotments issued to each of these appealing defendants, in so far as this particular form of action is concerned, are conclusively presumed to have been regularly made and are valid.

(e) Conclusion No. IX., to the effect that the shipments by each of these appealing defendants for interstate commerce, in excess of their respective allotments, were in violation of law.

(f) Conclusion No. X., to the effect that the United States of America is entitled to a permanent injunction restraining these appealing defendants, and each of them, and their officers and agents from handling lemons in violation of the terms and pro- [212] visions of said Order No. 53, and to a judgment for costs in this proceeding.

6. The evidence is insufficient to sustain Finding of Fact No. XIII., in this that there was no evidence to prove that the non-compliance by defendants with Order No. 53

(a) Was or would be injurious to interstate or foreign commerce; or

(b) Was or would be injurious to growers, handlers or consumers of lemons; or

(c) Did or would threaten the stability of interstate or foreign commerce in lemons; or

(d) Did or would tend to thwart the National policy of improving the marketing conditions in the handling of lemons in interstate or foreign commerce.

Dated: Los Angeles, California, this 27 day of July, 1942.

GUY RICHARDS CRUMP

Attorney for said defendants
and appellants [213]

LaVERNE CASE

[Title Court and Cause in LaVerne Case.]

NOTICE OF APPEAL TO UNITED STATES
CIRCUIT COURT OF APPEALS

Notice is hereby given that La Verne Co-Operative Citrus Association, a corporation, and Glendora Co-Operative Citrus Association, a corporation, defendants above named, hereby appeal to the United States Circuit Court of Appeals for the 9th Circuit from the final judgment entered in this action on the 29th day of April, 1942.

Dated: Los Angeles, California, July 27, 1942.

GUY RICHARDS CRUMP

Attorney for Appellants La
Verne Co-Operative Citrus
Association, a corporation,
and Glendora Cooperative
Citrus Association, a corpo-
ration.

Address:

458 South Spring Street,
Los Angeles, California.

Telephone:

Trinity 4152

[Endorsed]: Filed July 27, 1942. [214]

VENTURA CASE

[Title Court and Cause in Ventura Case.]

NOTICE OF APPEAL TO UNITED STATES
CIRCUIT COURT OF APPEALS

Notice is hereby given that Ventura Orange and Lemon Association, a corporation, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the 9th Circuit from the final judgment entered in this action on the 29th day of April, 1942.

Dated: Los Angeles, California, July 27, 1942.

GUY RICHARDS CRUMP

Attorney for Appellant Ven-
tura Orange and Lemon As-
sociation, a corporation

Address:

458 South Spring Street
Los Angeles, California.

Telephone:

Trinity 4152

[Endorsed]: Filed July 27, 1942. [215]

WHITTIER CASE.

[Title Court and Cause in Whittier Case.]

NOTICE OF APPEAL TO UNITED STATES
CIRCUIT COURT OF APPEALS

Notice is hereby given that Whittier Mutual Orange & Lemon Association, a corporation, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the 9th Circuit from the final judgment entered in this action on the 29th day of April, 1942.

Dated: Los Angeles, California, July 27, 1942.

GUY RICHARDS CRUMP

Attorney for Appellant Whittier Mutual Orange & Lemon Association, a corporation.

Address:

458 South Spring Street,
Los Angeles, California.

Telephone:

Trinity 4152

[Endorsed]: Filed July 27, 1942. [216]

INDEX CASE

[Title Court and Cause in Index Case.]

NOTICE OF APPEAL TO UNITED STATES
CIRCUIT COURT OF APPEALS

Notice is hereby given that Index Mutual Association, a corporation, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the 9th Circuit from the final judgment entered in this action on the 29th day of April, 1942.

Dated: Los Angeles, California, July 27, 1942.

GUY RICHARDS CRUMP

Attorney for Appellant Index
Mutual Association, a corporation.

Address:

458 South Spring Street,
Los Angeles, California.

Telephone:

Trinity 4152

[Endorsed]: Filed July 27, 1942. [217]

CHULA VISTA CASE.

[Title Court and Cause in Chula Vista Case.]

NOTICE OF APPEAL TO UNITED STATES
CIRCUIT COURT OF APPEALS

Notice is hereby given that Chula Vista Mutual Lemon Association, a corporation organized and existing under the laws of California, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the 9th Circuit from the final judgment entered in this action on the 29th day of April, 1942.

Dated: Los Angeles, California, July 27, 1942.

GUY RICHARDS CRUMP

Attorney for Appellant Chula
Vista Mutual Lemon Asso-
tion, a corporation.

Address:

458 South Spring Street,
Los Angeles, California.

Telephone:

Trinity 4152

[Endorsed]: Filed July 27, 1942. [218]

STIPULATION AS TO AGREED STATE-
MENT OF THE CASE FOR USE ON AP-
PEAL

The foregoing statement is hereby agreed to and approved as a full and correct "Statement of the Case" to be used on appeal to the United States Circuit Court of Appeals for the 9th Circuit, under the provisions of Rule 76 of the Rules of Civil Procedure.

It is further stipulated and agreed that said statement contains, among other things, all of the evidence (including all stipulations of facts admitted) received by the Court upon which the Findings of Fact, Conclusions of Law and Judgment in the La Verne, Ventura, Whittier, Index and Chula Vista Cases were based. The statement in the Findings of Fact and Conclusions of Law and the Final Judgment to the effect that the hearing and trial of said cause was had upon, among other things, "affidavits filed in support of and in opposition to the application for preliminary injunction" applies to certain of the other five cases consolidated for trial and tried with the five cases covered by this agreed statement of the case, in which said other five cases such affidavits were, in fact, filed. No such affidavits were filed or used in any of the five cases in connection with which this agreed statement is prepared. Said statement as to said affidavits was inserted in said Findings and Judgment by inadvertence.

It is further stipulated and agreed that said agreed statement shall constitute and be used as the record on appeal in each of said five named cases, and that, subject to the approval of said Appellate Court, said five cases may be consolidated on said appeal, and be heard and decided by said Appellate Court on [219] the one record on appeal.

Dated: This 18 day of August, 1942.

WM. FLEET PALMER,

United States Attorney,

WM. W. WORTHINGTON,

Assistant U. S. Attorney.

By WM. W. WORTHINGTON,

Attorneys for Plaintiff and
Appellee.

GUY RICHARDS CRUMP

Attorney for Defendants and
Appellants.

The foregoing Statement of the Case is hereby approved.

Dated: This 15 day of Sept., 1942.

BEN HARRISON

U. S. District Judge. [220]

Received: copy of the within Agreed Statement of the Case for Use on Appeal, this 18 day of August, 1942.

WM. FLEET PALMER,

WM. W. WORTHINGTON,

Attorneys for Plaintiff.

Premium charged for this bond is \$10.00 per annum.

Bond No. 42367

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That, Columbia Casualty Company, a corporation organized and existing under and by virtue of the laws of the State of New York, is held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said United States of America, to which payment, well and truly to be made, the said Columbia Casualty Company binds itself firmly by these presents.

Sealed with the corporate seal and dated the 21st day of July, 1942. [221]

The condition of the above obligation is such that:

Whereas, lately, to-wit: on the 29th day of April, 1942, in the above entitled action in the District Court of the United States, for the Southern District of California, Central Division, a final judgment was rendered and entered against defendants La Verne Co-operative Citrus Association, a corporation, and Glendora Co-operative Citrus Association, a corporation, and in favor of said plaintiff; and

Whereas, the said La Verne Co-operative Citrus

Association, a corporation, and Glendora Co-operative Citrus Association, a corporation, by a Notice of Appeal, to be filed contemporaneously herewith, are appealing from said judgment, and the whole thereof, to the United States Circuit Court of Appeals, for the Ninth Circuit, for a reversal thereof.

Now, Therefore, the condition of the above obligation is such that if the said La Verne Co-operative Citrus Association, a corporation, and Glendora Co-operative Citrus Association, a corporation, shall prosecute said appeal to effect, and shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as said Circuit Court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, said Columbia Casualty Company has caused the foregoing instrument to be executed and its corporate seal affixed thereto by its duly authorized Attorney in fact, at Los Angeles, California, this 21st day of July, 1942.

COLUMBIA CASUALTY
COMPANY,

By WILLIAM M. CURRAN, JR.,
Attorney in fact. [222]

State of California,
County of Los Angeles—ss.

On this 21st day of July, 1942, before me Rosemary Goebel, a Notary Public, in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared William M. Curran, Jr., known to me to be the person whose name is subscribed to the above and foregoing instrument, as the Attorney in fact of Columbia Casualty Company, the corporation that executed said instrument, and acknowledged to me that he subscribed the name of Columbia Casualty Company thereto, as Principal, and his own name as Attorney in fact.

I further certify that said instrument was executed by said William M. Curran, Jr., as Attorney in fact of Columbia Casualty Company, in my presence, and that his signature thereto is genuine.

Witness my hand and seal the day and year in this certificate first above written.

[Notarial Seal]

ROSEMARY GOEBEL,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires: June 15, 1944.

[Endorsed]: Filed Jul. 27, 1942. [223]

Premium charged for this bond is \$10.00 per annum.

Bond No. 42366

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That, Columbia Casualty Company, a corporation organized and existing under and by virtue of the laws of the State of New York, is held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said United States of America, to which payment, well and truly to be made, the said Columbia Casualty Company binds itself firmly by these presents.

Sealed with the corporate seal and dated the 21st day of July, 1942. [224]

The condition of the above obligation is such that:

Whereas, lately, to-wit: on the 29th day of April, 1942, in the above entitled action in the District Court of the United States, for the Southern District of California, Central Division, a final judgment was rendered and entered against defendant, Ventura County Orange and Lemon Association, a corporation, and in favor of said plaintiff; and

Whereas, the said Ventura County Orange and Lemon Association, a corporation, by a Notice of Appeal, to be filed contemporaneously herewith, is

appealing from said judgment, and the whole thereof, to the United States Circuit Court of Appeals, for the Ninth Circuit, for a reversal thereof.

Now, Therefore, the condition of the above obligation is such that if the said Ventura County Orange and Lemon Association, a corporation, shall prosecute said appeal to effect, and shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as said Circuit Court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, said Columbia Casualty Company has caused the foregoing instrument to be executed and its corporate seal affixed thereto by its duly authorized Attorney in fact, at Los Angeles, California, this 21st day of July, 1942.

[Seal of Columbia Casualty Company]

COLUMBIA CASUALTY
COMPANY,

By WILLIAM M. CURRAN, JR.,
Attorney in fact. [225]

State of California,
County of Los Angeles—ss.

On this 21st day of July, 1942, before me Rosemary Goebel, a Notary Public, in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, per-

sonally appeared William M. Curran, Jr., known to me to be the person whose name is subscribed to the above and foregoing instrument, as the Attorney in fact of Columbia Casualty Company, the corporation that executed said instrument, and acknowledged to me that he subscribed the name of Columbia Casualty Company thereto, as Principal, and his own name as Attorney in fact.

I further certify that said instrument was executed by said William Curran, Jr., as Attorney in fact of Columbia Casualty Company, in my presence, and that his signature thereto is genuine.

Witness my hand and seal the day and year in this certificate first above written.

[Notarial Seal]

ROSEMARY GOEBEL,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires: June 15, 1944.

[Endorsed]: Filed Jul. 27, 1942. [226]

Premium charged for this bond is \$10.00 per annum.

Bond No. 42365

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That, Columbia Casualty Company, a corporation organized and existing under and by virtue

of the laws of the State of New York, is held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said United States of America, to which payment, well and truly to be made, the said Columbia Casualty Company binds itself firmly by these presents.

Sealed with the corporate seal and dated the 21st day of July, 1942. [227]

The condition of the above obligation is such that:

Whereas, lately, to-wit: on the 29th day of April, 1942, in the above entitled action in the District Court of the United States, for the Southern District of California, Central Division, a final judgment was renedered and entered against defendant, Whittier Mutual Orange & Lemon Association, a corporation, and in favor of said plaintiff; and

Whereas, the said Whittier Mutual Orange & Lemon Association, a corporation, by a Notice of Appeal, to be filed contemporaneously herewith, is appealing from said judgment, and the whole thereof, to the United States Circuit Court of Appeals, for the Ninth Circuit, for a reversal thereof.

Now, Therefore, the condition of the above obligation is such that if the said Whittier Mutual Orange & Lemon Association, a corporation, shall prosecute said appeal to effect, and shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as said Circuit Court may award if the judgment is modified, then this obli-

gation to be void, otherwise to remain in full force and effect.

In Witness Whereof, said Columbia Casualty Company has caused the foregoing instrument to be executed and its corporate seal affixed thereto by its duly authorized Attorney in fact, at Los Angeles, California, this 21st day of July, 1942.

COLUMBIA CASUALTY
COMPANY

By WILLIAM M. CURRAN, JR.,
Attorney in fact. [228]

State of California,
County of Los Angeles—ss.

On this 21st day of July, 1942, before me, Rosemary Goebel, a Notary Public, in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared William M. Curran, Jr., known to me to be the person whose name is subscribed to the above and foregoing instrument, as the Attorney in fact of Columbia Casualty Company, the corporation that executed said instrument, and acknowledged to me that he subscribed the name of Columbia Casualty Company thereto, as Principal, and his own name as Attorney in fact.

I further certify that said instrument was executed by said William M. Curran, Jr., as Attorney in fact of Columbia Casualty Company, in my

presence, and that his signature thereto is genuine.

Witness my hand and seal the day and year in this certificate first above written.

[Notarial Seal]

ROSEMARY GOEBEL,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires: June 15, 1944.

[Endorsed]: Filed Jul. 27, 1942. [229]

Premium charged for this bond is \$10.00 per annum.

Bond No. 42364

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That, Columbia Casualty Company, a corporation organized and existing under and by virtue of the laws of the State of New York, is held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said United States of America, to which payment, well and truly to be made, the said Columbia Casualty Company binds itself firmly by these presents.

Sealed with the corporate seal and dated the 21st day of July, 1942. [230]

The condition of the above obligation is such that:

Whereas, lately, to-wit: on the 29th day of April, 1942, in the above entitled action in the District Court of the United States, for the Southern District of California, Central Division, a final judgment was rendered and entered against defendant, Index Mutual Association, a corporation, and in favor of said plaintiff; and

Whereas, the said Index Mutual Association, a corporation, by a Notice of Appeal, to be filed contemporaneously herewith, is appealing from said judgment, and the whole thereof, to the United States Circuit Court of Appeals, for the Ninth Circuit, for a reversal thereof.

Now, Therefore, the condition of the above obligation is such that if the said Index Mutual Association, a corporation, shall prosecute said appeal to effect, and shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as said Circuit Court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, said Columbia Casualty Company has caused the foregoing instrument to be executed and its corporate seal affixed thereto by its duly authorized Attorney in fact, at Los Angeles, California, this 21st day of July, 1942.

[Corporate Seal]

COLUMBIA CASUALTY
COMPANY,

By WILLIAM M. CURRAN, JR.,
Attorney in fact. [231]

State of California,
County of Los Angeles—ss.

On this 21st day of July, 1942, before me, Rosemary Goebel, a Notary Public, in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared William M. Curran, Jr., known to me to be the person whose name is subscribed to the above and foregoing instrument, as the Attorney in fact of Columbia Casualty Company, the corporation that executed said instrument, and acknowledged to me that he subscribed the name of Columbia Casualty Company there, as Principal, and his own name as Attorney in fact.

I further certify that said instrument was executed by said William M. Curran, Jr., as Attorney in fact of Columbia Casualty Company, in my presence, and that his signature thereto is genuine.

Witness my hand and seal the day and year in this certificate first above written.

[Notarial Seal]

ROSEMARY GOEBEL,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires: June 15, 1944.

[Endorsed]: Filed Jul. 27, 1942. [232]

Premium charged for this bond is \$10.00 per annum.

Bond No. 42363

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That, Columbia Casualty Company, a corporation organized and existing under and by virtue of the laws of the State of New York, is held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said United States of America, to which payment, well and truly to be made, the said Columbia Casualty Company binds itself firmly by these presents.

Sealed with the corporate seal and dated the 21st day of July, 1942. [233]

The condition of the above obligation is such that: Whereas, lately, to-wit: on the 29th day of April, 1942, in the above entitled action in the District Court of the United States, for the Southern District of California, Southern Division, a final judgment was rendered and entered against defendant, Chula Vista Mutual Lemon Association, a corporation, and in favor of said plaintiff; and

Whereas, the said Chula Vista Mutual Lemon Association, a corporation, by a Notice of Appeal, to be filed contemporaneously herewith, is appealing

from said judgment, and the whole thereof, to the United States Circuit Court of Appeals, for the Ninth Circuit, for a reversal thereof.

Now, Therefore, the condition of the above obligation is such that if the said Chula Vista Mutual Lemon Association, a corporation, shall prosecute said appeal to effect, and shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as said Circuit Court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, said Columbia Casualty Company has caused the foregoing instrument to be executed and its corporate seal affixed thereto by its duly authorized Attorney in fact, at Los Angeles, California, this 21st day of July, 1942.

[Corporate Seal]

COLUMBIA CASUALTY
COMPANY,

By WILLIAM M. CURRAN, JR.,
Attorney in fact. [234]

State of California,
County of Los Angeles—ss.

On this 21st day of July, 1942, before me, Rosemary Goebel, a Notary Public, in and for the County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared William M. Curran, Jr., known

to me to be the person whose name is subscribed to the above and foregoing instrument, as the Attorney in fact of Columbia Casualty Company, the corporation that executed said instrument, and acknowledged to me that he subscribed the name of Columbia Casualty Company thereto, as Principal, and his own name as Attorney in fact.

I further certify that said instrument was executed by said William M. Curran, Jr., as Attorney in fact of Columbia Casualty Company in my presence, and that his signature thereto is genuine.

Witness my hand and seal the day and year in this certificate first above written.

[Notarial Seal]

ROSEMARY GOEBEL,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires June 15, 1944.

[Endorsed]: Filed Jul. 27, 1942. [235]

[Title of District Court and Said Consolidated Causes.]

STIPULATION AND ORDER EXTENDING
TIME TO FILE RECORD ON APPEAL
AND DOCKET CAUSES IN APPELLATE
COURT

Whereas, the defendants La Verne Co-operative Citrus Association, a corporation, and Glendora Co-operative Citrus Association, a corporation, in the above entitled case No. 1596-BH Civil, and the defendants in each of the other four above entitled cases did, on the 27th day of July, 1942, file with the Clerk of the above entitled Court their separate Notices of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the respective final judgments entered against them in the above entitled causes, and did, on said 27th day of July, 1942, present to and serve upon the United States Attorney, as Attorney for the Plaintiff in said causes, at Los Angeles, California, a proposed Agreed Statement of the Case for Use on Appeal, Under Rule 76 of the Rules of Civil Procedure; and [237]

Whereas, the respective attorneys for the Appellants and Appellee are now engaged in examining and considering said Agreed Statement for the purpose of agreeing upon and settling the same as the record on appeal in said causes.

Now, Therefore, It Is Hereby Stipulated and Agreed that the time within which the record on

said appeals may be filed and said causes on appeal docketed in and with the Circuit Court of Appeals for the Ninth Circuit may be enlarged and extended up to and including the first day of October, 1942.

Dated: Los Angeles, California, this 29th day of July, 1942.

WM. FLEET PALMER,

United States Attorney

WM. W. WORTHINGTON,

Assistant U. S. Attorney.

By WM. W. WORTHINGTON,

Attorneys for Plaintiff and
Appellee.

GUY RICHARDS CRUMP,

By A. I. McCORMICK,

Attorney for Defendants and
Appellants.

ORDER

Upon reading and filing the above and foregoing stipulation, and good cause appearing therefor,

It Is Hereby Ordered that the time within which the record on said appeals may be filed and said causes on appeal docketed in and with the Circuit Court of Appeals for the Ninth Circuit may be and is hereby extended up to and including the first day of October, 1942.

BEN HARRISON,

U. S. District Judge.

[Endorsed]: Filed Jul. 29, 1942. [238]

[Title of District Court and Said Consolidated Causes.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 238 inclusive contain the Original Agreed Statement of the Case for use on Appeal, under Rule 76 of the Rules of Civil Procedure and full, true and correct copies of Bonds for Costs on Appeal and Stipulation and Order Extending time to file record and Docket Causes which constitute the record on Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$6.35, which amount has been paid to me by the Appellants.

Witness my hand and the seal of the said District Court this 23 day of September, 1942.

[Seal]

EDMUND L. SMITH,

Clerk.

By THEODORE HOCKE,

Deputy Clerk.

[Endorsed]: No. 10266. United States Circuit Court of Appeals for the Ninth Circuit. La Verne Co-operative Citrus Association, a corporation, Glendora Co-operative Citrus Association, a corporation, Ventura Orange and Lemon Association, a corporation, Whittier Mutual Orange & Lemon Association, a corporation, Index Mutual Association, a corporation and Chula Vista Mutual Lemon Association, a corporation, organized and existing under the laws of California, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed September 24, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10266

LaVERNE CO-OPERATIVE CITRUS ASSO-
CIATION, a corporation, and GLENDORA
CO-OPERATIVE CITRUS ASSOCIATION,
a corporation,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

VENTURA COUNTY ORANGE AND LEMON
ASSOCIATION, a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

WHITTIER MUTUAL ORANGE AND LEMON
ASSOCIATION, a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

INDEX MUTUAL ASSOCIATION, a corpora-
tion,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

CHULA VISTA MUTUAL LEMON ASSOCIA-
TION, a corporation organized and existing
under the laws of California,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

VERIFIED APPLICATION FOR ORDER FOR
CONSOLIDATION OF APPEALS AND
CONSENT OF APPELLEE THERETO.

United States of America,
State of California,
County of Los Angeles—ss.

Guy Richards Crump, being first duly sworn, on oath deposes and says:

I am the attorney and counsel for the Appellants in each of the above entitled five causes. I was one of the attorneys for said Appellants, and each of them, in the trial court, namely, In the District Court of the United States, for the Southern District of California, Central Division, and represented said Appellants (as defendants in said trial court) during all of the proceedings in said court.

Pursuant to an order of said trial court, all of said five causes were consolidated and tried together therein, and the evidence introduced was applicable to and considered by said court in connection with each and all of said five causes.

In each of said causes the United States of America was plaintiff, and each defendant was a handler of lemons, and the action was brought for the sole purpose of obtaining a permanent injunction enjoining the respective defendants from violating an order of the Secretary of Agriculture concerning the handling and shipping of lemons in interstate commerce. The issues were the same in all of the cases. The facts found and the conclusions arrived at by the trial court as to the issues involved were the same in all of said five causes, and the final decrees for permanent injunction made and entered by the trial court were the same in all of said causes.

The certified record on appeal herein is in the form of an Agreed Statement of the Case under rule 76 of the Rules of Civil Procedure, and relates to and covers all of said five causes. The stipulation concerning said Agreed Statement (with the approval of the trial Judge) provides, among other things, as follows:

“It Is Further Stipulated And Agreed that said agreed statement shall constitute and be used as the record on appeal in each of said five named cases, and that, subject to the approval of said Appellate Court, said five cases may be consolidated on said appeal, and be heard and decided by said Appellate Court on the one record on appeal.”

Wherefore, affiant, for and on behalf of said Appellants, hereby applies for and requests an order of this Court to the effect that said five causes shall be consolidated for hearing on this appeal, and that said appeals in said five causes shall be heard and decided upon the one record which has been filed herein.

GUY RICHARDS CRUMP

Subscribed and sworn to before me, this 23rd day of September, 1942.

[Seal] HERTHA N. EBERT,
Notary Public in and for the County of Los Angeles,
State of California.

It Is So Ordered:

WILLIAM DENMAN,
U. S. Circuit Judge.

Received copy of the above and foregoing affidavit and application, this 23rd day of September, 1942, and the Appellee hereby consents to the making and entry of the order therein requested.

LEO V. SILVERSTEIN,
United States Attorney,
WM. M. WORTHINGTON,
Assistant U. S. Attorney,
By WM. W. WORTHINGTON,
Attorneys for Appellee.

[Title of Circuit Court of Appeals and Causes.]

APPELLANTS' STATEMENT OF POINTS TO
BE RELIED UPON AND DESIGNATION
OF THE RECORD TO BE PRINTED.

Come Now the Appellants, and each of them, in the above entitled five causes, and hereby adopt the Statement Of Points On Which Appellants, And Each Of Them, Intend To Rely On The Appeal, filed with the Clerk of the Trial Court, and set forth in full in the Agreed Statement Of The Case, commencing at Page 210 of the Certified Record on Appeal herein. Appellants intend to rely in this Court of Appeals on the points set forth in said Statement, and on all of said points.

Appellants further state that they believe and consider that the entire record certified by the trial court is necessary for the consideration of the points upon which said Appellants intend to rely

in this court, and they desire to have said entire record printed herein.

GUY RICHARDS CRUMP,
Attorney for the respective
Appellants in said five
causes.

Received copy of the above and foregoing Statement and Designation, this 23rd day of September, 1942.

LEO V. SILVERSTEIN,
United States Attorney,
WM. M. WORTHINGTON,
Assistant United States
Attorney,
By WM. W. WORTHINGTON,
Attorneys for Appellee.

[Title of Circuit Court of Appeals and Causes.]

STIPULATION IN RE: PRINTING
OF RECORD ON APPEAL

It Is Hereby Stipulated And Agreed by and between all of the parties to the above entitled five causes on appeal, through and by their respective attorneys, that the official Government documents in printed pamphlet form, attached to the complaints in each of said causes, and designated as Exhibit "A" and Exhibit "B" (one of each of said printed pamphlets being a part of the Agreed Statement of the Case, certified by the Clerk of

the trial court herein), may be included in the printed record herein by physically incorporating in said printed record the printed copies of said two pamphlets instead of by printing their contents in such printed record, and

It Is Further Stipulated And Agreed that said two pamphlets and documents (the number thereof being limited and extremely difficult to obtain) need be included in only four copies of the printed record.

It Is Further Stipulated that an order of Court may be made and entered in conformity herewith.

Dated: September 23, 1942.

GUY RICHARDS CRUMP,
Attorney for the respective
Appellants in said five
causes.

LEO V. SILVERSTEIN,
United States Attorney,
WM. M. WORTHINGTON,
Assistant U. S. Attorney,

By WM. W. WORTHINGTON,
Attorneys for Appellee.

It Is So Ordered:

WILLIAM DENMAN,
U. S. Circuit Judge.